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JOSEPH F. SPANIOL, JR
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No. 87-267

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

D. H. HOLMES COMPANY, LTD.,
Appellant

v.

SHIRLEY MCNAMARA,
SECRETARY OF REVENUE AND TAXATION,
THE DEPARTMENT OF REVENUE AND TAXATION,
STATE OF LOUISIANA,
Appellee

**On Appeal from the Court of Appeal,
Fourth Circuit, State of Louisiana**

JOINT APPENDIX

ANDREW RINKER, JR.*
WILLIAM F. GRACE, JR.
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JURISDICTIONAL STATEMENT FILED AUGUST 14TH, 1987
PROBABLE JURISDICTION NOTED NOVEMBER 2ND, 1987

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

September 14th, 1983—Plaintiff, Shirley McNamara, Secretary of Revenue and Taxation, The Department of Revenue and Taxation, State of Louisiana, Original Petition filed in the Civil District Court for the Parish of Orleans, State of Louisiana.

October 4th, 1983—Defendant, D.H. Holmes Company, Ltd., Original Answer filed.

February 7th, 1984—Defendant's Motion for Summary Judgment filed.

March 16th, 1984—Motion for Summary Judgment denied.

March 19th-20th, 1985—Trial held.

July 19th, 1985—District Court Judgment Rendered in Favor of Plaintiff Assessing Use Tax on Catalogs and Advertisement Materials Shipped by Printers Outside Louisiana.

July 26th, 1985—Defendant's Motion for a New Trial filed.

December 20th, 1985—Plaintiff's Motion for Partial New Trial denied.

March 25th, 1986—Restated Judgment filed.

April 21st, 1986—Defendant's Petition for Devolutive Appeal Court of Appeal, Fourth Circuit, State of Louisiana filed.

March 16th, 1987—Opinion and Judgment of the Court of Appeal, Fourth Circuit, State of Louisiana filed.

May 29th, 1987—Writ of Certiorari and/or Review denied by the Supreme Court of the State of Louisiana.

August 14th, 1987—Jurisdictional Statement of D.H. Holmes Company, Ltd., filed with the Supreme Court of the United States.

November 2nd, 1987—Probable Jurisdiction noted by the Supreme Court of the United States.

CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA
DIVISION H

Docket No. 83-15523

SHIRLEY MCNAMARA, SECRETARY
OF REVENUE AND TAXATION, THE DEPARTMENT
OF REVENUE AND TAXATION, STATE OF LOUISIANA

versus

D. H. HOLMES COMPANY, LTD.

PETITION FOR PAYMENT OF DELINQUENT TAXES AND APPLICABLE INTEREST THEREON, TOGETHER WITH STATUTORY ATTORNEYS' FEES[*]

[Filed Sept. 14, 1983]

The petition of SHIRLEY MCNAMARA, SECRETARY OF REVENUE AND TAXATION, THE DEPARTMENT OF REVENUE AND TAXATION, STATE OF LOUISIANA, acting herein in her official capacity and on behalf of her predecessors and successors in office, domiciled in the City of Baton Rouge, State of Louisiana, ["petitioner"], with respect represents:

1.

That D. H. HOLMES COMPANY, LTD., a Louisiana corporation, organized under the laws of the State of Louisiana, on May 13th, 1905, domiciled at 819 Canal

---

[*] The following Pleadings and Excerpts from the Transcript are reproduced verbatim.

Street, New Orleans, Louisiana 70112, with its principal office located at 819 Canal Street, New Orleans, Louisiana 70112, with its Louisiana registered office at 819 Canal Street, New Orleans, Louisiana 70112, and with its principal business establishment in Louisiana located at 819 Canal Street, New Orleans, Louisiana 70112, and which, on July 17th, 1978, appointed James E. Ammon, 819 Canal Street, New Orleans, Louisiana 70112, as its agent for service of process, is made defendant herein ["defendant"].

2.

That defendant is indebted unto petitioner in the amount of ONE HUNDRED NINETY-SEVEN THOUSAND, FORTY-FOUR AND 99/100 ($197,044.99) DOLLARS, for delinquent Louisiana General Sales Taxes, and interest thereon to May 20th, 1983, due to the State of Louisiana for the tax years beginning on the first day of January, 1978, and ending on the 31st day of December, 1981, ["the taxable period"], together with statutory interest as provided by R.S. 47:1601 from and including the 20th day of May, 1983, on the taxes due, ONE HUNDRED FORTY-SEVEN THOUSAND, TWO HUNDRED FOURTEEN AND 70/100 ($147,214.70) DOLLARS, through the date of the final judgment herein and attorneys' fees in the amount of ten per centum (10%) of the total of said taxes and interest as provided by R.S. 47:1512.

3.

That amicable demand having been made in vain, petitioner proposed to assess the general sales tax due from defendant. On May 3rd, 1983, the Department of Revenue and Taxation issued its assessment notice, a copy whereof being hereunto annexed as Exhibit "A". That

notwithstanding said proposed assessment, defendant has refused to pay the sum due.

4.

That pursuant to the provisions of LA. R.S. 47:1512 petitioner employed PUGH and PUGH, a Louisiana partnership, to assist in the collection of the taxes and interest due, and having referred to an attorney at law for collection the taxes and interest due, payable and unpaid by the defendant, the tax debtor, the petitioner is entitled to recover an additional charge for attorneys' fees in the amount of ten per centum (10%) of the taxes and interest due from the defendant to the petitioner.

5.

Petitioner attaches hereto as Exhibit "B" an agreement to extend prescription as to the taxes, interest and attorneys' fees herein referred to.

WHEREFORE, petitioner prays that this matter be set for trial and after due proceedings had, there be judgment in favor of the petitioner, and against the defendant, in the amounts as follows:

ONE HUNDRED NINETY-SEVEN THOUSAND FORTY-FOUR AND 99/100 ($197,044.99) DOLLARS, for delinquent Louisiana General Sales Taxes, and interest thereon to May 20th, 1983, due to the State of Louisiana for the tax years beginning on the first day of January, 1978, and ending on the 31st day of December, 1981, ["the taxable period"], together with statutory interest as provided by R.S. 47:1601 from and including the 20th day of May, 1983, on the taxes due, ONE HUNDRED FORTY-SEVEN THOUSAND, TWO HUNDRED FOURTEEN and 70/100 ($147,214.70) DOLLARS, through the date of the final judgment herein and attorneys' fees in the amount of ten per centum

(10%) of the total of said taxes and interest as provided by R.S. 47:1512.

/s/ Robert G. Pugh
Of the Law Firm of
PUGH and PUGH
Suite 555
Commercial National Bank
Building
Shreveport, Louisiana 71101
Attorneys for Petitioner

EXHIBIT "A"

State of Louisiana
DEPARTMENT OF REVENUE AND TAXATION
P.O. Box 201
Baton Rouge, Louisiana 70821

FOR ASSISTANCE CALL TOLL FREE INTRASTATE
1-800-272-9855

REVISED

Your Account Number 6034078000

Date of Notice May 3, 1983

D. H. Holmes Co., Ltd.
P.O. Box 60160
New Orleans, LA 70160

Louisiana General Sales Tax 1-1-79/12-31-81

You have 15 days from 5-3-83 for your response to be received by this office. Please give this statement your prompt attention to avoid further penalty, interest and fees. Please return the enclosed copy of this letter with your response.

NOTICE OF TAX DUE

1.	Tax Due	$147,214.70
2.	Interest To 5-20-83	49,830.29
3.	Delinquent Penalty To	—0—
4.	Negligence Penalty	—0—
5.	NSF Check Penalty	—0—
6.	Other Charges (See Remarks)	—0—
7.	Total Lines 1 Thru 6	197,044.99
8.	Less Payments And Credits	—0—
9.	Total Amount Due And Payable	$197,044.99

REMARKS:

In accordance with R.S. 47:1562, this Department proposes to assess you for the tax shown above. The amount of tax results from the following: field audit examination.

/s/ Robert L. Jenkins
ROBERT L. JENKINS
Reviewing Auditor
Audit Review Unit
Sales Tax Section

RLJ:pfb

Enclosures

EXHIBIT "B"

State of Louisiana

DEPARTMENT OF REVENUE AND TAXATION
AGREEMENT TO SUSPEND PRESCRIPTION OF
LOUISIANA GENERAL SALES TAX

Whereas, under the provisions of Article VII, Section 16 of the constitution of Louisiana the prescription of taxes is fixed at three years from December 31 of the year in which the taxes were due; and

Whereas, under the provisions of Section 1580 of Title 47 of the Revised Statutes of 1950, the prescription of taxes may be suspended by means of an agreement between the taxpayer and the Secretary of Revenue and Taxation; and

Whereas, there exists a dispute between the Secretary of Revenue and Taxation and D. H. Holmes Company, Inc., as to the amount of Louisiana General Sales Tax owed for the years 1-1-79/12-31-79; and

Whereas, both the taxpayer and the Secretary of Revenue and Taxation desire to have additional time within which to discuss the legal questions and facts involved, it is hereby agreed that the Secretary of Revenue and Taxation shall not finally assess nor bring suit for collection of such taxes prior to February 1, 1983, and the taxpayer agrees that the running of the period of prescription against the assessment or collection of any such tax due and owing the State of Louisiana for the years covered by this agreement is hereby suspended for a period of one year from December 31, 1982, and that any such tax may be assessed or suit instituted for the collection thereof at any time between the dates of February 1, 1983 through December 31, 1983, and that the taxpayer will never plead prescription to any claim for taxes which are the subject of the agreement for the

period stated above if such taxes are assessed or suit brought for the collection thereof before the expiration of the time set out herein.

Signed at New Orleans this 6th day of October 1982

Paul R. Falter
By Paul R. Falter

D. H. HOLMES COMPANY, LTD.
Signature of taxpayer

Title: Vice President-Controller

Baton Rouge, Louisiana this 7 day of Oct. 1982.

SHIRLEY MCNAMARA
SECRETARY OF REVENUE AND TAXATION

By: /s/ [Illegible]

Title

STATE OF LOUISIANA:

PARISH OF CADDO :

BEFORE ME, the undersigned authority, came and appeared ROBERT G. PUGH, attorney for Shirley McNamara, Secretary of Revenue and Taxation, the Department of Revenue and Taxation, State of Louisiana, petitioner in the foregoing suit, who after being duly sworn did state that all the allegations of fact contained in the foregoing petition are true and correct to the best of the affiant's knowledge and belief, and that this affidavit is being made pursuant to LA. R.S. 13:5034.

/s/ Robert G. Pugh
ROBERT G. PUGH

SWORN TO AND SUBSCRIBED before me this 12th day of September, 1983.

/s/ Robert G. Pugh, Jr.
Notary Public in and for
Caddo Parish, Louisiana

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA
DIVISION "H"

No. 83-15523 Docket No. 4

(Title Omitted in Printing)

ANSWER TO PETITION

[Filed Oct. 14, 1983]

NOW INTO COURT, through undersigned counsel, comes D. H. Holmes Company, Ltd. ("Holmes"), who for answer to the Petition, with respect, says:

I.

Defendant admits the allegations set forth in Paragraph 1 of the Petition.

II.

Defendant denies all and singular the allegations set forth in Paragraph 2 of the Petition.

III.

Defendant admits that it received a Revised Proposed Assessment, dated 3 May 1983, and denies all and singular the remaining allegations set forth in Paragraph 3 of the Petition.

IV.

Defendant denies all and singular the allegations set forth in Paragraph 4 of the Petition.

V.

Defendant avers that no answer is required by it to the allegations set forth in Paragraph 5 of the Petition, but, if an answer is required, the same is denied.

AND NOW, FURTHERING ANSWERING, DEFENDANT HOLMES AVERS AS FOLLOWS:

VI.

The claim for taxes, interest, penalties, etc. for the calendar year 1978 is barred by prescription.

VII.

The claim for interest, penalties, attorney fees and other charges for the calendar year 1979 is barred by prescription.

VIII.

A portion of the taxes, interest, penalties, attorney fees and other charges which petitioner seeks to recover relates to the sales of food sold for preparation and consumption in the home and is specifically exempt from the sales tax.

IX.

Regulation 47:305, which purportedly authorizes the taxation of loose candy is invalid for the following reasons, to-wit:

(a) The Secretary had no authority to promulgate the regulation;

(b) The regulation in question goes beyond the power and authority granted to the Secretary;

(c) The regulation is inconsistent with the statute that it purports to construe;

(d) The regulation imposes a tax where none is imposed by statute; and

(e) The regulation is vague, ambiguous and unconstitutional.

X.

The taxes imposed upon Holmes are unconstitutional in that they violate the interstate commerce clause of the constitution of the United States of America and the Revised Statutes of the State of Louisiana.

WHEREFORE, defendant Holmes prays that this its answer to the petition of Shirley McNamara, Secretary of Revenue and Taxation, be deemed good and sufficient and that, after all due proceedings be had, there by judgment rendered herein in favor of the defendant and against the petitioner, dismissing the petition with prejudice and at plaintiff's cost and for all general and equitable relief.

CHAFFE, MCCALL, PHILLIPS,
TOLER & SARPY

By: /s/ William F. Grace, Jr.
WILLIAM F. GRACE, JR.
ANDREW RINKER, JR.
1500 First NBC Building
New Orleans, LA 70112
Telephone: (504) 568-1320

Attorneys for D. H. Holmes Company, Ltd.

(Certificate of Service Omitted in Printing)

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA
DIVISION "H"

No. 83-15523 Docket 4

(Title Omitted in Printing)

MOTION FOR SUMMARY JUDGMENT

[Filed Feb. 7, 1984]

Defendant, D.H. Holmes Co., Ltd., moves for summary judgment, pursuant to Louisiana Code of Civil Procedure articles 966-968, dismissing the claim of the plaintiff, Shirley McNamara, Secretary of Revenue and Taxation, the Department of Revenue and Taxation, State of Louisiana, on the grounds that the pleadings on file, together with the affidavit of Paul R. Falter and the answers to interrogatories, show that there is no genuine issue as to any material facts and that mover is entitled to judgment as a matter of law. Further grounds for this Motion are set forth in the Memorandum submitted herewith.

Respectfully submitted,

CHAFFE, MCCALL, PHILLIPS,
TOLER & SARPY

By: /s/ Andrew Rinker, Jr.
WILLIAM F. GRACE, JR.
ANDREW RINKER, JR.
1500 First NBC Building
New Orleans, LA 70112
Telephone: (504) 568-1320

Attorneys for Defendant,
D. H. Holmes Co., Ltd.

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA
DIVISION "H"

(Title Omitted in Printing)

ORDER

IT IS ORDERED that plaintiffs, Shirley McNamara, Secretary of Revenue and Taxation, The Department of Revenue and Taxation, State of Louisiana, show cause on the 17th day of February 1984, at 9:00 A.M. why summary judgment in favor of defendant D. H. Holmes Company, Ltd. should not be granted as prayed for.

New Orleans, Louisiana, this 8th day of February, 1984.

/s/ Gretta R. Burns
GRETTA R. BURNS
Minute Clerk
Division "H"
By Order of the Court

Feb. 17, 1984 Cont'd to 3/16/84

Mar. 16, 1984 S.J. as to Tax on Catalogs is denied.
S.J. as to Retail Sales on Candy is referred to the merits.

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA
DIVISION "H"

(Title Omitted in Printing)

MOTION FOR A NEW TRIAL

[Filed July 26, 1985]

Now into court, through its undersigned counsel, comes D.H. Holmes Company, Ltd., defendant in the above entitled and numbered cause, and respectfully represents that:

I.

The judgment rendered against D.H. Holmes Company, Ltd. herein on the 19th day of July 1985, is contrary to the law and the evidence, in the following particulars:

1. With respect to the sales tax on candy sold at the Holmes candy counters, the reasons set forth in the Judgment indicate that the candy is exempt from taxation under La.R.S. 305(4)(a)(xiv), yet the judgment imposes tax on the sale of such candy.

2. The sale of candy by Holmes is clearly exempt from the imposition of the sales tax.

3. The imposition of a "use" tax on catalogs shipped to select residents of Louisiana from out of State is in clear violation of the interstate commerce clause of the United States Constitution.

II.

Defendant, D.H. Holmes Company, Ltd. is aggrieved by the said judgment and desires and is entitled to a new trial.

WHEREFORE, defendant prays that Shirley McNamara, Secretary of Revenue and Taxation, The Department of Revenue and Taxation, State of Louisiana, the plaintiff herein, be duly ordered to appear at a date and hour to be fixed by this court and show cause why the judgment rendered herein on the 19th day of July, 1985, should not be set aside and annulled and why a new trial should not be granted.

CHAFFE, MCCALL, PHILLIPS,
TOLER & SARPY

By: /s/ Andrew Rinker, Jr.
WILLIAM F. GRACE, JR.
ANDREW RINKER, JR.
1500 First N.B.C. Bldg.
New Orleans, LA 70112
568-1320

Attorneys for Defendant

(Certificate of Service Omitted in Printing)

ORDER

Considering the foregoing application for a new trial, let Shirley McNamara, Secretary of Revenue and Taxation, The Department of Revenue and Taxation, State of Louisiana, be and she is hereby ordered to show cause in this court on the 29 day of August, 1985, 9 a.m., why the judgment rendered herein on the 19th day of July 1985, should not be set aside and annulled, and a new trial granted in this matter.

New Orleans, Louisiana, this 29th day of July, 1985.

/s/ Joseph T. Katz
JOSEPH T. KATZ
Minute Clerk
Division "L"

By Order of the Court

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA
DIVISION "H"

(Title Omitted in Printing)

PETITION FOR DEVOLUTIVE APPEAL

[Filed April 21, 1986]

The petition of D.H. Holmes Company, Ltd., defendant in the above numbered and entitled cause, with respect represents:

1.

Defendant is aggrieved by the judgment read, rendered and signed in this cause, as that judgment relates to the use tax on catalogs, on the 19th day of July, 1985, granting judgment in favor of plaintiff, as said judgment is contrary to the law and the evidence.

2.

Defendant's motion for a new trial on the issue of the use tax on catalogs was denied on March 25, 1986.

3.

Defendant desires to appeal devolutively from the aforesaid judgment rendered against it, but solely as to that portion of the judgment imposing a use tax on the merchandise catalogs.

WHEREOF, defendant, D.H. Holmes Company, Ltd., prays that it be granted a devolutive appeal in the above numbered and entitled cause from the judgment read,

rendered and signed against it on March 25, 1986, but solely as to that portion of the judgment imposing a use tax on the merchandise catalogs, returnable to the Court of Appeal, Fourth Circuit, State of Louisiana, within the delays provided by law.

CHAFFE, MCCALL, PHILLIPS,
TOLER & SARPY

By: /s/ Andrew Rinker, Jr.
WILLIAM F. GRACE, JR.
ANDREW RINKER, JR.
1500 First N.B.C. Building
New Orleans, Louisiana 70112
(504) 568-1320
Counsel for
D.H. Holmes Co., Ltd.

ORDER

Considering the foregoing petition:

LET D.H. Holmes Company, Limited, be and it is hereby granted a devolutive appeal from the judgment read, rendered and signed by the court on the 25th day of March, 1986, on the issue of the use tax on the merchandise catalogs, returnable to the Court of Appeal, Fourth Circuit, State of Louisiana, on the 20th day of June, 1986.

New Orleans, Louisiana, this 22nd day of April, 1986.

/s/ Revius O. Ortique
REVIUS O. ORTIQUE
District Judge

(Certificate of Service Omitted in Printing)

PLAINTIFF'S EXHIBIT NO. 1

[STATE SEAL]

STATE OF LOUISIANA
Legislative Fiscal Office
Baton Rouge

[Filed Mar. 20, 1985]

TO: The Honorable John J. Hainkel
Speaker of the Louisiana House of Representatives

FROM: Mark C. Drennen
Legislative Fiscal Officer

DATE: November 17, 1982

SUBJECT: Assessment of Potential Impact to State and Local Governments As Result of Recent Court Decision in City of New Orleans vs. State of Louisiana

In attempting to assess the potential impact of the recent court decision returned by Division I, Civil District Court for the Parish of Orleans (*the City of New Orleans and the Honorable Ernest N. Morial, Mayor, versus the State of Louisiana*), it is necessary to define three broad areas of state-local inter-relationships which are involved.

First, the case in question directly impacts fundirg and operations of the offices identified in the suit that are located in New Orleans. Additionally, those other local governmental units which have home-rule charters (parish or municipality) and perform similar functions named in the suit could pursue the same avenue of redress as New Orleans if the higher courts uphold the original decision. Moreover, all other parishes are subject to some mandates and are potential litigants against the state. Thus, fiscal impacts need to be estimated for

New Orleans as described by the suit and they must be estimated for the same as a whole.

Second, upwards of one-third of the annual state appropriations budget is comprised of funds which are distributed to local governmental units. Included in these funds to local government are supplemental pay to firemen, police, sheriff's deputies, coroners, constables, and marshalls; parish road funds; mass transit funds; revenue sl aring; severance, tobacco, and beer taxes; and racetrack funds among others. Also included are funds distributed through various state departmental budgets which share costs of some functions or reimburse local governments for responsibilities of state government administered by local units—examples include support of registrar of voters operations, district attorneys, and maintenance of state prisoners in parish jails.

The third area of impact involves funds provided by the state to local non-governmental bodies. This group of funds represents payment for services and programs which directly benefit the various locales and which in the absence of state funding local governments could potentially be responsible for providing.

The remainder of this report will covere: 1) costs to the state for assuming local officers impacted in the recent decision for New Orleans alone and the state as a whole; 2) funds flowing from the state to local governmental units; and 3) funds flowing from the state to local non-governmental organizations for various programs and services.

Offices/Functions Affected by Lawsuit

Data displayed in Table 1 is made up of two parts. Part A provides a comparison between the costs the City of New Orleans claims are mandated by the state and the actual salary/staffing levels established in the statutes in question. Part B provides an estimate of the

costs to the state, if the state is required to assume total operations of the offices of the coroner, district attorney, registrar of voters, and judiciary.

Table 1, Part A shows that for all offices/functions identified in the lawsuit the City of New Orleans claims the state mandates spending of $18,773,392. As a comparison, a review of the statutes by the Fiscal Office indicates that a total of only $4,359,581 is actually incurred by New Orleans as a result of state mandates. (If the state is required to fund these offices, there is no requirement that we fund them to the extent that the city currently provides funding.)

To identify the differences, it is necessary to review the statutes for each office to determine explicit statutory staffing/salary mandates. Statutory provisions about the Criminal Court messengers provide for a Chief Messenger to be paid $1,800 a year with other messengers to receive $1,500 per year. Using the present staffing of eleven messengers it can be computed that this mandates a total annual cost of $16,300 (assuming one chief and 10 others); however, the City claims costs of $94,139 for these 11 people.

For the Coroner the statute mandates 10 personnel at varying salary levels for a total annual cost of $37,640. The City's budget, by contrast, shows 44 personnel with an annual cost of $726,855.

Statutes covering the Criminal Court Clerk and Deputies require a clerk at $8,500 per year, one chief deputy at $4,200 per year, property clerks at $3,600 per year, and other deputies at $2,760 per year each. No staffing requirements beyond the Clerk and Chief Deputy are mandated. Using the current staffing as presented in the City's budget indicates that the annual cost is $246,820 compared to the $1,248,741 claimed by the City for the 85 employees.

Salaries for the Criminal Court Jury Commissioners are set by law at $4,200 a year with $4,000 a year for each secretary. Given the current five commissioners and four secretaries this computes to a total cost of $37,000 annually. By contrast the city claims costs of $60,200 for the same personnel.

Civil Court Clerks' salaries are set at $3,600 per year by law. Based on current staffing (12) this necessitates an annual cost of $43,200. The City claims the impact is $77,275 for these personnel.

The state, by statute, provides that the City fund $6,600 per year for the Chief Deputy Registrar of Voter and $6,200 a year each for assistant. Assuming one chief and 32 assistants per current staffing levels this means a total annual cost of $205,000; whereas, the City claims an annual cost of $386,414.

With respect to the Criminal Sheriff the city claims that statutory mandates result in an annual cost of $12,696,021. Statutory provisions direct the governing authority to set salaries and budget sufficient funds annually to provide for this office's operation. Thus, there are no specific staffing and/or salary requirements. The contention is made that this office's operation is a state corrections function and that the criminal sheriff is responsible for incarceration of persons who have violated state statutes; thus, the sheriff is performing a state function. Presently, *the state does provide funds* for the maintenance, feeding, and other costs associated with the security of *state* prisoners. By statute the state has defined what constitutes a *state* prisoner and provides $18.25 per day per prisoner to Orleans (and other parishes) to pay local corrections operations for the costs incurred. In the last fiscal year the state provided $2,057,486 for state prisoners located in New Orleans. The state does not, by contrast, pay local governments for persons who are incarcerated for violating munici-

pal or parish ordinances. Nor does the state pay for costs associated with incarceration of persons who have not been convicted of violating state statutes.

The section of law covering pay for the District Attorney, Assistants, and other staff states that the state shall pay no less than $20,000 for the salary of the D.A. and the City shall appropriate such amount for salary as deemed necessary. Further, the City is directed to appropriate no less than $124,000 for assistants, other staff, and office expenses. This is the only amount required to be actually appropriated by the City.

For the salary and expense fund of the Board of Assesors, state law directs the City to annually remit $75,000. This compares to the claimed cost of $430,000 per year.

Concerning New Orleans City Park, recent statutes enacted in the Regular 1982 Session direct the City to appropriate annually to the City Park Improvement Association no more than $350,000; no minimum is set.

In the suit no dollar cost was attached to housing the Orleans Parish Juvenile Court and ten sections of Criminal District Court. To realistically determine an impact on these items it would be necessary to know at a minimum: space requirements (square footage and/or unique requirements), appropriate space costs within market area, availability of requisite housing facilities, utility costs, maintenance costs, and janitorial costs. To effectively evaluate current staff requirements of the offices under litigation it would be necessary to analyze data describing agency/program goals, work-load measures, and job classifications among other factors.

Table 1, Part B provides a projected estimate, statewide, of the fiscal impact if the state was required to assume responsibility for the following offices in the lawsuit—District Attorneys, Registrar of Voters, Coroner,

and Judiciary. The data used to compile this estimate is derived from the "Louisiana State-Local Fiscal Study Report" which was performed by the Legislative Fiscal Office. This estimate is for all parishes regardless of whether there is a homerule charter or not and, as such, this represents a worst case impact scenario. As noted in the table this estimate does *not* include any costs associated with office space, utilities, janitorial or maintenance services. The total state-wide fiscal impact (excluding New Orleans Parish Criminal Sheriff's Office) is estimated at approximately $50 million in fiscal year 1983-84. Since space costs, utilities, and so forth are not included in the estimate, it can reasonably assumed that this estimate is lower than if these other considerations were included. They were not included since this type data were not collected in the original database. The database as used includes expenditures for the fiscal year ending in 1980. Projection assumptions of the annual increase in expenditures is 10% for 1981-82 and 5% thereafter.

TABLE 1

COST REQUIRED TO FUND LOCAL OFFICES IMPACTED BY COURT DECISION

A. *Estimated Impact of Assuming Costs of Offices Identified in Court Decision—Comparison of Claimed Mandates with Explicit Statutory Provisions:*

Office/Function	Statutory Provisions/ Legal Citations	Estimated Cost Based on Statutory Provisions (Statutory Staffing)	Alleged Cost as Presented By New Orleans in Lawsuit (Current Staffing)
1. Criminal Court— Chief Messenger and Other Messengers	R.S. 13:1374/ (1) Chief Messenger @ $1,800/year Messenger @ $1,500/year	$ 16,300(a) (1) (10)	$ 94,139(11) (1) (10)
2. Coroner and Assistants	R.S. 33:1621/ (1) Coroner @ $12,000/year (2) Asst. Coroners @ $5,800 ea./year (1) Assistant @ $1,200/year (1) Chief Clerk @ $2,520/year (1) Engineer @ $2,520/year (2) Clerks @ $1,920 ea./year (2) Morgue Keepers @ $1,980 ea./year	$ 37,640(10)	$ 726,855(44)
3. Criminal Court— Clerk and Deputies	R.S. 13:1371, 13:1372/ (1) Clerk @ $8,500/year (1) Chief Deputy @ $4,200/year Property Clerk @ $3,600/year Other Deputies @ $2,760/year	$ 246,820(b) (1) (1) (6) (77)	$ 1,248,741(85) (1) (1) (6) (77)

4. President— Board of Assessors	R.S. 47:1910/ $154,000/year	$ 154,000(1)	$ 154,000(1)
5. Criminal Court— Jury Commissioners	R.S. 15:111/ Commissioners @ $4,200 ea./year Secretary @ $4,000/year	$ 37,000(9) (5) (4)	$ 60,200(9) (5) (4)
6. Civil Court Criers	R.S. 13:1302/ Crier @ $3,600 ea./year	$ 43,200(12)	$ 77,275(12)
7. Juvenile Court Clerk	R.S. 1587 (A), (B)/ (1) Clerk Other personnel as deemed necessary for court. Budget sufficient funds.	$1,363,135	$ 1,363,135(71)
8. Registrar of Voters	R.S. 18:59/ Chief Deputy @ $6,600/year Assistants @ $6,200/year	$ 205,000(33)	$ 386,414(33)
9. Criminal Sheriff	R.S. 33:1525/ Governing authority of New Orleans will set salaries and pay for personnel.	$2,057,486(d)	$12,696,021(792)
10. District Attorney and Assistants	R.S. 16:71 (C), (D)/ District Attorney—State pays $20,000/ Other pay is discretionary by city. Assistants @ $124,000 total	$ 124,000(c)	$ 1,186,612
11. Board of Assessors	R.S. 1910.2/ $75,000 for Board per year	$ 75,000	$ 430,000

Office/Function	Statutory Provisions/ Legal Citations	Estimated Cost Based on Statutory Provisions (Statutory Staffing)	Alleged Cost as Presented By New Orleans in Lawsuit (Current Staffing)
12. City Park Improvement Association	R.S. 36:209 (M)/ Provides that city of New Orleans appropriate no more than $350,000.	—0—	$ 350,000
TOTALS		$4,359,581	$18,773,392

(a) No staffing levels mandated; estimate assumes 1 Chief Messenger and 10 others based on current N.O. city budget.

(b) No staffing levels mandated; estimate assumes 1 Clerk of Court, 1 Chief Deputy, 6 Property Clerks, 77 Deputies based on current N.O. budget.

(c) State pays $20,000 for D.A.'s salary; no other salary is mandated but is discretionary by local government. State mandates the city pay a total of $124,000 annually for Assistant D.A.'s.

(d) Estimate is based on the fees paid to the City of New Orleans to maintain State prisoners. Prisoners become the responsibility of the state upon conviction of state statute or felony (R.S. 15:566). The state pays $18.25 per day per qualified prisoner for all costs that the parish prison incurs in handling, maintaining, feeding, and sheltering the prisoners.

TABLE 2: Funds to Local Governmental Units
(FY 1982-83 Unless Otherwise Noted)

Dept./Agency	Purpose/Recipient	New Orleans		Balance of State
I. Statutory/Budget Unit Appropriations:				
Judiciary	Various Judicial Offices	$ 4,600,690		$ 2,098,434
Executive/Vet. Aff.	Parish Service Offices	90,240		1,409,760
/State Pl.	Planning Districts	(A)		320,000
/Comm. Law Enforcement	Law Enforcement Districts	399,938		1,504,527
Elections	Reg. of Voters	257,271	(E)	1,797,687
Commerce	Econ. Development Districts	(A)		287,000
CRT/St. Libraries	Parish Libraries	224,741		1,502,669
/Tourism		(B)		200,000
/Div. of Arts		1,106,680		535,270
/Secretary	City Park-New Orleans	285,000		(F)
DOTD	Soil/Water Conservation Districts	(C)		1,666,166
	Reg. Transit Authority	(C)		129,050
	Public Improvements Fund	(C)		21,345,200
	Aviation Improvement Fund	(C)		5,446,646
	Water Shed Improvement	(C)		1,047,776
	Sec. Emergency Fund	(C)		3,600,000
Public Safety	Supp. Police Pay	4,108,826	(E)	9,570,373
	Supp. Deputy Sheriff Pay	1,576,592	(E)	13,045,234
	Supp. Const./J.P. Pay		(E)	461,550
	Supp. Firemen Pay	2,845,111	(E)	4,919,584
	Law Enf. Comms. Network	24,618		714,420

Dept./Agency	Purpose/Recipient	New Orleans		Balance of State
DHHR/HS & EQ	Health and Sanitation	1,505,380(D)		
Corrections	Special Impact Funds	6,000		57,000
	Maint. State Prisons	2,057,486	(E)	3,404,739
Rev. & Tax/Tax Comm.	Asst. to Parish Assessors	20,130		935,870
DUCA	Econ. Dev. Dists.	(A)		80,000
DOE	Bossier Community College			102,178(+)
	Elem. & Secondary Education			662,100(+)
	Voc. Ed.	113,048(+)		4,111,387(+)
	Instruct. Services	421,499(+)		3,492,720(+)
	Elem. & Secondary Education	614,554(+)		4,499,267(+)
	Driver Safety	15,375(+)		984,625(+)
	Adult Education	400,000(+)		4,770,941(+)
	Food & Nutrition	834,476(+)		7,588,940(+)
	Educational Support	1,798,456(+)		15,032,139(+)
	Special Education	792,028(+)		6,444,680(+)
Miscellaneous	New Orleans Cor. Off.	57,350		
	Board of Jury Comm.—N.O.	322,313		
	General Asst.	8,616,036		8,616,036
	Tourist Promotion—N.O.	719,200		
	Act 272 of 1970	700,000		
	Board of Assessors—N.O.	794,930		
	Racetrack	2,343,150		5,299,864
	Tobacco	4,410,214	(E)	20,794,604
	Mass Transit	8,890,222	(E)	3,603,039
	Coroner Supp. Pay	2,740	(E)	373,784
	LIFE-Local Gov't Asst.	9,278,850	(E)	60,721,150
	Parish Road Funds	2,788,752	(E)	43,711,248
	2% Fire Insurance Rebate	600,880	(E)	4,011,634
	Beer Tax	808,860	(E)	4,553,926
	Supp. Revenue Sharing	1,387,401		9,888,249
	Sub-total	$ 65,819,037	(E)	$ 281,936,727
II. Constitutional Distributions				
Revenue Sharing		11,073,960		78,926,040
Royalty Funds		597,392	(E)	31,782,918
Severance Tax		109,643	(E)	29,164,519
DOE/MFP (G)		84,962,382(+)		839,820,451(+)
	Totals	$162,562,414		$1,261,630,655

A = Multi-parish jurisdictional units/services provided to all parishes within district.
B = New Orleans receives an appropriation under miscellaneous for tourist promotion.
C = Projects performed on state-wide, district-wide, parish bases—difficult to determine specific impact per parish.
D = Commingled state and federal funds.
+ = Prior to 4.4% cuts.
E = 1981-82 distributions.
F = Other recipients are non-governmental.
G = Constitution does not provide a particular funding level.

Statewide Costs for Assuming:

District Attorneys, Registrar of Voters, Coroner, Judiciary	Estimated Cost
	$49,551,764 *

* This estimate does *not* include costs associated with office space, utilities, janitorial, or maintenance services. This estimate assumes assumption of costs for all parishes regardless of homerule status. The costs for the New Orleans Criminal Sheriff is excluded as the state currently reimburses the parish for costs associated with the maintenance of state prisoners.

ATTACHMENT A

TABLE 3: Funds to Non-governmental Units
(FY 1982-83 Unless Otherwise Noted)

Dept./Agency	Purpose/Recipient	New Orleans	Balance of State
EXECUTIVE /Comm. on Law Enforcement Districts	Basic Training Grants	—0—	$ 476,117(A)
/Elderly Affairs	Senior Citizen Centers	$ 1,327,356	2,360,909
CRT/Secretary	Museums, Festivals	70,000	261,200
DHHR/OHD	Day Care	480,814	191,305
	Health Related-Homemaker	21,694	689,145
	Housing Improvement	111,224	—0—
	Protection for Children	—0—	54,150
	Respite Care	—0—	1,382,258
	Socialization	618,393	210,566
	Substitute Care	—0—	83,639
	Training and Treatment	75,810	—0—
	Transportation	25,002	180,945
	Residential Community Adj. Counseling	—0—	393,651
	Community Planning for Services to Children	—0—	66,000
DHHR/OMR	Supervised Apartment Living	99,300	117,870
	Intermediate Community Homes	10,100(B)	108,300(B)
DHHR/OMHSA	Drug Rehabilitation	1,014,907(B)	—0—
	Substance Abuse	1,030,613(B)	853,443(B)
	Mental Health	180,200(B)	886,030(B)
DHHR/OMR	Day Developmental	1,106,955	8,733,163
DHHR/DYS	Shelter Care for Preadjudicated Children	150,000	914,554

Dept./Agency	Purpose/Recipient	New Orleans	Balance of State
Environmental Quality	Health Services	1,095,000	—0—
Corrections	Employment Ex. Inc.	—0—	57,000
Revenue & Taxation	Wagering Funds	27,800	1,441,000
DUCA	Community Action Agencies	20,000	1,060,000
	Community Development Associations	333,676	25,000
DOE			
/Elem. & Sec. Educ.		515,000	30,000
/Adult Education		336,333	428,782
/Auxiliary Programs		280,000	—0—
/Research and Development		778,409	700,110
/Special Education		712,195	3,278,962
/Driver Safety Education		37,325	112,675
/Food and Nutrition		644,788	469,212
/Educational Support		759,434	2,006,784
DOE/MFP	Non-Public School Admin. Costs	2,420,000	3,080,000
Board of Regents	Aid to Private Education Universities	2,904,454(A)	238,894(A)
	Tulane Medical School for Louisiana Students	597,500(A)	—0—
	Totals	$17,784,288	$30,891,664

A = Post 4.4% budget adjustments.

B = Commingled state and federal funds.

PLAINTIFF'S EXHIBIT 5

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Gretna 100 Westbank Expwy Gretna 366-2361
Fat City
Interstate 10 At Causeway Blvd Metairie 833-8201
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Res 1108 Highland Av Metairie 835-5805
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Holloway Company The
6131 River Rd Harahan 733-7422
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Holly's Auto Repair 1025 N Claiborne Av 821-5831
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Lakeside Shopping Center Metairie 837-2296
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Downtown Store 135 Baronne 581-3888
HOLMAN VOCATIONAL CENTER
1515 S Saiceda 822-7196
Holmes Blowers 2926 Canal 822-5600
Holmes D H Cafeteria 561-6140

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NOTE: You May Dial Direct To The Desired Departments Listed Below
For Departments Not Listed In The Belle Promenade Shopping Center Dial 349-3100
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Ladies 349-3257
Men's 349-3264
Appliance—
Major 349-3125
Small Electric 349-3235
Bath Shop 349-3134
Boys—
Sizes 8 To 12 349-3135
Bridal Registry 349-3163
Candy 349-3143
China 349-3158
Cosmetics 349-3100
Dresses—
City Park 349-3203
Daytime 349-3207
Miss D H H 349-3207
Designer 349-3207
Junior 349-3224
Today's Woman 349-3208
Factory 349-3210
Foundations 349-3213
Furniture 349-3215
Infants Furniture 349-3240
Gifts 349-3129
Girls—
Sizes 1-3 & 2-4 349-3136
Sizes 7 To 14 349-3136
Accessories 349-3221
Gloves 349-3231
Gourmet 349-3143
Handbags 349-3231
Hosiery 349-3234
Housewares 349-3235
Infants 349-3240
Jewelry—
Costume 349-3243
Fine 349-3242
Watches 349-3244
Lamps & Shades 349-3246
Linen—
Bed 349-3249
Table 349-3150
Lingerie—
Foundations 349-3213
Sleepwear 349-3254
Major Appliance 349-3125
Maternity Shop 349-3207
Men's Clothing—
Suits 349-3259
Furnishings 349-3260
Sportswear 349-3262
Pictures & Frames 349-3246
Shoes—
Children 349-3287
Men's 349-3289
Continued On Next Column

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HOLMES D H CO LTD—
Belle Promenade Shopping Center—
Shoes—
Women's Better 349-3230
City Park 349-3230
Silverware 349-3158
Sportswear—
Pontchartrain 349-3274
City Park 349-3270
Junior 349-3224
Updated 349-3275
St Charles 349-3273
Stationery 349-3232
Stationery-Cards 349-3233
Service Departments—
Alterations 349-3116
Cashier 349-3190
Credit 349-3181
Delivery 734-3437
Employment 349-3209
Gift Wrap 349-3145
Monogram 349-3116
Personnel 349-3209
Shopping Service 561-6714
Ticket Center 561-6295
NOTE: You May Dial Direct To The Desired Departments Listed Below
For Departments Not Listed In The Downtown Store Dial 561-6611
CANAL STREET STORE—
819 Canal 561-6611
Appliances—
Major 561-6124
Small Electric 561-6235
Bath Shop 561-6130
Blouses-City Park 561-6300
Books 561-6134
Boys Clothing—
Sizes 4 To 7 561-6319
Sizes 14 To 20 561-6136
Bridal Salon 561-6137
Bridal Registry 561-6317
Cafeteria 561-6140
Candle Shop 561-6219
Candy 561-6143
Candy 561-6144
Car Care Center—
Chef Menteur 561-6145
Rampart Street 561-6147
Cards—
Greeting Card Counter 561-6311
Children Accessories 561-6117
China & Crystal 561-6162
Coats-Ladies 561-6168
Confectionery 561-6218
Cosmetics 561-6611
Cosmetics-Men's 561-6258
Draperies 561-6159
Dresses—
City Park 561-6207
Daytime 561-6204
Designer 561-6139
Esplanade 561-6207
Junior 561-6202
Miss D H H 561-6207
Women's World 561-6204
Social Occasion 561-6206
Better 561-6200
Factory-Young Men's 561-6210
Fashion Accessories 561-6228
Foundations 561-6213
Furniture-Bedding 561-6215
Furs-Storage 561-6214
Gifts 561-6219
Girls Clothing—
Sizes 4 To 6x 561-6117
Sizes 1 To 4 561-6319
Sizes 7 To 14 561-6221
Gloves 561-6230
Gourmet 561-6225
Hair Salon 561-6131
Hair Salon Outback 561-6151
Handbags 561-6230
Hearing Aids 561-6232
Hosiery 561-6234
Housewares 561-6235
Infants 561-6240
Jewelry—
Costume 561-6243
Fine 561-6475
Lamps-Shades 561-6246
Linen—
Bath 561-6130
Other Linens 561-6249
Table 561-6250
Lingerie—
Foundations-Daywear 561-6213
Loungewear-Robes 561-6254
Sleepwear 561-6146
Luggage 561-6255
Continued On Next Column

Continued From Last Column
HOLMES D H CO LTD—
CANAL STREET STORE—
Men's Clothing—
Furnishings-Sportswear 561-6264
Pants 561-6263
Suits & Coats 561-6259
Ties 561-6260
Millinery & Wigs 561-6226
Optical 561-6269
Outback-Deli 561-6886
Pictures-Mirrors-Frames 561-6277
Portrait Studio 561-6276
Radios & Records 561-6278
Restaurant 561-6321
Rugs 561-6281
Rugs Oriental 561-6280
Sewing Machines 561-6283
Shoes—
Women's 561-6292
Children 561-6287
City Park 561-6291
Junior 561-6291
Men's 561-6289
Repair 561-6285
Silverware 561-6293
Sporting Goods 561-6298
Sportswear—
Designer Shop 561-6139
City Park 561-6300
Junior 561-6305
Miss D H H 561-6200
Pontchartrain 561-6218
Petite 561-6208
St Charles 561-6303
Today's Women 561-6307
Updated 561-6573
Young Junior 561-6306
Stationery 561-6311
Suits & Coats-Women's 561-6168
Telephone Shopping Service 561-6714
Toys 561-6313
Travel Bureau 561-6314
Umbrellas 561-6228
Wallets—
Ladies 561-6230
Men's 561-6260
Wine & Liquor 561-6211
Service Departments—
Adjustments Bureau 561-6666
Appliance-Small Electric Service 561-6526
Collection 734-3404
Contract Interiors 561-6518
Credit Collection 734-3404
Credit Department 561-6666
Delivery 734-3437
Employee Welfare 561-6652
Employment Office 561-6209
Fashion Coordinator 561-6496
Fashion Coordinator-Youth 561-6514
Hearing Aids 561-6232
Home Planning Center 561-6520
Interiors-Residential 561-6518
Lay-Away Cashier 561-6227
Mail Order 561-6714
Nightwatchman 561-6576
Opera Guild 561-6271
Optical 561-6269
Parking Complex 561-6575
Picture Frame Work 561-6332
Rug Cleaning 734-3415
Telephone Shopping Service 561-6714
Ticket Office 561-6295
Travel Bureau 561-6314
Wedding Gift Service 561-6317
NOTE: You May Dial Direct To The Desired Departments Listed Below
For Departments Not Listed In The Lake Forest Shopping Center Dial 241-7711
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Lake Forest 241-7711
Accessories—
Ladies 245-6128
Men's 245-6260
Junior 245-6224
Appliance—
Major 245-6125
Small 245-6235
Bath Shop 245-6162
Books 245-6299
Boys—
Sizes 8 To 12 245-6135
Sizes 14 To 20 245-6136
Bridal Registry 245-6163
Candy 245-6143
Car Care Center 245-6148
China 245-6158
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LAKE FOREST SHOPPING CENTER—
China-Glass & Gifts 245-6158
Clock Shop 245-6219
Coats-Ladies 245-6207
Cosmetics 241-7711
Draperies 245-6194
Dresses—
City Park 245-6207
Career 245-6207
Daytime 245-6207
Esplanade 245-6207
Miss D H H 245-6208
Designer 245-6208
Junior 245-6231
Today's Woman 245-6208
Petite 245-6297
Factory 245-6231
Foundations 245-6213
Furs 245-6208
Furniture 245-6240
Infants Furniture 245-6240
Gifts 245-6219
Girls—
Sizes 1-3 & 2-4 245-6240
Sizes 4 To 6x 245-6220
Sizes 7 To 14 245-6136
Accessories 245-6221
Gloves 245-6230
Gourmet 245-6143
Hair Salon 245-6131
Handbags 245-6230
Hat Bar 245-6265
Hosiery 245-6142
Housewares 245-6235
Infants 245-6240
Jarman 245-6288
Jewelry—
Costume 245-6243
Fine 245-6242
Watches 245-6244
Lamps & Shades 245-6246
Linen—
Bed 245-6249
Table 245-6250
Lingerie—
Foundations 245-6254
Sleepwear 245-6213
Luggage 245-6255
Major Appliance 245-6125
Maternity Shop 245-6207
Men's Clothing—
Suits 245-6259
Furnishings 245-6260
Sportswear 245-6263
Pants 245-6263
Millinery 245-6265
Mustang Shop 245-6210
Photo Studio 245-6127
Pictures-Frames 245-6246
Robes-Ladies 245-6213
Rugs 245-6215
Shoe Repair 245-6285
Shoes—
Children 245-6287
Jarman 245-6288
Footlight 245-6290
Famolare 245-6225
Men's 245-6289
Woman's Better 245-6291
City Park 245-6291
Junior 245-6225
Red Cross 245-6290
Silverware 245-6159
Sound Center 245-6124
Sporting Goods 245-6299
Sportswear—
Pontchartrain 245-6274
City Park 245-6274
Cache 245-6270
Miss D H H 245-6274
Junior 245-6224
Young Junior 245-6224
Updated 245-6137
St Charles 245-6272
Today's Woman 245-6271
Stationery—
Cards 245-6134
Mail-Cards 245-6123
Subteen 245-6136
Suits & Coats-Ladies 245-6207
Toys 245-6299
Service Departments—
Alterations 245-6116
Car Care Center 245-6147
Cashier 245-6190
Credit 245-6181
Delivery 734-3437
Employment Office 245-6209

Continued On Next Column

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Continued From Last Column

HOLMES D H CO LTD—
LAKE FOREST SHOPPING CENTER—
Service Departments—
Gift Wrap 245-6145
Monogram 245-6116
Personnel 245-6209
Photo Studio 245-6127
Shoe Repair 245-6285
Shopping Service 561-6714
Ticket Center 561-6295
Travel Bureau 245-6152
NOTE: You May Dial Direct To The Desired Departments Listed Below
For Departments Not Listed In The Lakeside Shopping Center Dial 831-6111
LAKESIDE SHOPPING CENTER—
Lakeside 831-6111
Appliances—
Major 831-6122
Small Electric 831-6235
Bath Shop 831-6130
Blouses-City Park 831-6300
Books 831-6134
Boys Clothing—
Sizes 4 To 7 831-6136
Sizes 14 To 20 831-6318
Bridal Salon 831-6138
Bridal Registry 831-6162
Candle Shop 831-6219
Candy 831-6143
Candy 831-6144
Car Care Center
Lakeside Shopping Center 831-6147
Cards-Greeting Card Counter 831-6257
Children Accessories 831-6191
China & Crystal 831-6162
Coats-Ladies 831-6214
Cosmetics 831-6111
Cosmetics-Men's 831-6178
Draperies 831-6194
Dresses—
City Park 831-6201
Daytime 831-6201
Designer Shop 831-6396
Esplanade 831-6201
Junior 831-6202
Miss D H H 831-6201
Women's World 831-6201
Factory-Young Men's 831-6210
Fashions Accessories 831-6228
Furniture—
Bedding 831-6215
Infants 831-6218
Outdoor 831-6215
Furs 831-6214
Gifts 831-6219
Girls Clothing—
Sizes 3 To 6x 831-6221
Sizes 7 To 14 831-6275
Gloves 831-6230
Gourmet 831-6128
Hair Salon 831-6131
Handbags 831-6230
Hearing Aids 831-6232
Hosiery 831-6311
Housewares 831-6235
Infants 831-6218
Jewelry—
Costume 831-6243
Fine 831-6244
Lamps-Shades 831-6246
Linen—
Bath 831-6130
Other 831-6249
Table 831-6130
Lingerie 831-6253
Luggage 831-6255
Men's Clothing—
Suits & Coats 831-6264
Furnishings 831-6197
Pants 831-6259
Sportswear 831-6381
Millinery & Wigs 831-6265
Optical 831-6269
Photo Studio 831-6276
Pictures 831-6246
Radios-Records 831-6278
Restaurant 831-6140
Rugs 831-6281
Sewing Machines 831-6283
Shoes—
Junior 831-6291
Children 831-6287
City Park 831-6292
Footlight-Mall 831-6290
Men's 831-6289
Stride Rite-Mall 831-6288
Women's 831-6291
Repair 831-6285

Continued On Next Column

Continued From Last Column

HOLMES D H CO LTD—
LAKESIDE SHOPPING CENTER—
Silverware 831-6163
Sound Center 831-6278
Sporting Goods 831-6310
Sportswear—
City Park 831-6300
Miss D H H 831-6145
Junior 831-6223
Pontchartrain 831-6307
Stationery 831-6257
Suits & Coats Ladies 831-6214
Toddlers 831-6240
Toys 831-6313
TRAVEL BUREAU 831-6314
Umbrellas 831-6228
Wallets—
Ladies 831-6230
Men's 831-6197
Wigs 831-6265
Wedding & Copy Photography 831-6359
Service Departments—
Alterations—
Ladies 831-6335
Men's 831-6335
Appliances Small Electric Service 831-6235
Collection-Elmwood 734-3404
Credit Office 831-6182
Delivery-Elmwood 734-3437
Employment Office 831-6209
Furniture-Adjustment Elmwood 734-3465
Hearing Aids 831-6232
Lay-Away Cashier 831-6184
Optical 831-6269
Shoe Repair 831-6285
Shopping Service 561-6714
Ticket Office 561-6295
Travel Bureau 831-6314
Warehouse Store Elmwood 734-3444
China & Crystal 831-6162
Clock Shop 831-6246
Coats-Ladies 831-6214
NOTE: You May Dial Direct To The Desired Departments Listed Below
For Departments Not Listed In The Oakwood Shopping Center Dial 362-4800
OAKWOOD SHOPPING CENTER—
Oakwood 362-4800
Accessories—
Men's 361-7264
Junior 361-7226
Ladies 361-7230
Appliance—
Major 361-7125
Small Electric 361-7236
Bath Shop 361-7235
Books 361-7122
Boys—
Sizes 8 To 12 361-7135
Sizes 14 To 20 361-7139
Bridal Registry 361-7158
Bridal Salon 361-7163
Candy 361-7143
Car Care Center 361-7147
China 361-7158
Chin -Glass & Gifts 361-7158
Clock Shop 361-7246
Coats-Ladies 361-7207
Cosmetics 362-4800
Draperies 361-7194
Dresses—
City Park 361-7206
Career 361-7206
Daytime 361-7206
Esplanade 361-7207
Miss D H H 361-7207
Designer 361-7207
Junior 361-7279
Today's Woman 361-7208
Petite 361-7207
Factory 361-7210
Foundations 361-7254
Furs 361-7207
Furniture 361-7215
Infants Furniture 361-7241
Gifts 361-7129
Girls—
Sizes 1-3 & 2-4 361-7240
Sizes 7 To 14 361-7136
Accessories 361-7221
Gloves 361-7230
Gourmet 361-7143
Hair Salon 361-7131
Handbags 361-7230
Hat Bar 361-7265
Hosiery 361-7227
Housewares 361-7236

Continued On Next Column

Continued From Last Column

HOLMES D H CO LTD—
OAKWOOD SHOPPING CENTER—
Infants 361-7240
Jarman Shoes 361-7289
Jewelry—
Costume 361-7243
Fine 361-7242
Watches 361-7244
Lamps & Shades 361-7246
Linen—
Bed 361-7249
Table 361-7235
Lingerie—
Foundations 361-7213
Under Fashion 361-7254
Sleepwear 361-7254
Luggage 361-7107
Major Appliance 361-7125
Maternity Shop 361-7207
Men's Clothing—
Suits 361-7259
Furnishings 361-7260
Sportswear 361-7262
Pants 361-7263
Millinery 361-7265
Motorvations 361-7135
Mustang Shop 361-7211
Photo Studio 361-7127
Pictures-Frames 361-7246
Robes-Ladies 361-7213
Shoes—
Children 361-7287
Jarman 361-7289
Footlight 361-7291
Famolare 361-7291
Men's 361-7289
Women's Better 361-7291
City Park 361-7291
Junior 361-7291
Red Cross 361-7290
Silverware 361-7160
Sound Center 361-7124
Sporting Goods 361-7255
Sportswear—
Pontchartrain 361-7271
City Park 361-7272
Cache 361-7271
Miss D H H 361-7271
Junior 361-7224
Young Junior 361-7226
Updated 361-7271
St Charles 361-7272
Today's Woman 361-7202
Stationery—
Cards 361-7232
Cards 361-7233
Mail Cards 361-7119
Subteen 361-7136
Suits & Coats-Ladies 361-7207
Toys 361-7298
Service Departments—
Alterations 361-7116
Car Care Center 361-7147
Cashier 361-7190
Credit 361-7181
Delivery 734-3437
Employment Office 361-7209
Giftwrap 361-7145
Monograms 361-7116
Personnel 361-7209
Photo Studio 361-7127
Shopping Service 561-6714
Ticket Center 561-6295
Travel Bureau 361-7152
Uptown Square Store—
7x Broadway 861-8141
Louisiana World Fair Store 569-5040
Lake Forest Store—
Cards 241-6060
Photo Studio 246-8587
Travel Bureau 241-8350
Car Care Centers—
Lakeside Shopping Center 837-7226
Lake Forest Shopping Center 241-7500
Oakwood Shopping Center Gretna 366-4371
224 N Rampart 523-7203
4126 Chef Menteur Hwy 947-2184
Rug Cleaning 900 Distributors Row Jefferson 733-0326

Holmes D H Inc 900 Distributors Row 733-7454
Holmes D H Optical Dept
Oakwood Shopping Ctr Gretna 362-4811
Holmes D H Portrait Gallery
Oakwood Shopping Center 368-5245

HOLMES D H TRAVEL BUREAU—

TRAVEL BUREAU-LAKE FOREST
Lake Forest Shopping Center 245-6152

Continued On Next Page

Continued From Last Page

HOLMES D N TRAVEL BUREAU—
TRAVEL BUREAU-OAKWOOD
Oakwood Shopping Center Gretna 368-8827
TRAVEL BUREAU-CANAL ST
819 Canal 522-7941
Travel Bureau-Lakeside
Lakeside Shopping Center Metairie 831-6314

HOLMES FIRE & SAFETY
COMMODITIES 7620 Townsend Pl 246-1927
Holmes Floyd J 3232 Metairie Rd Metairie 831-1955
Holmes Hampton Rev
217 Westwego Av Bridge City 436-4282
Holmes House Apts 103 Amapola Cir Gretna 362-6379
Holmes James MD 1415 Tulane Av 589-5821
Holmes James F atty American Bank Bldg 561-5700
Holmes James R atty
First National Bank Of Commerce Bldg 568-1320
Res 3030 Bayou 821-0696
Holmes John A Dr 301 Hector Av Metairie 834-7205
Holmes John T atty 3637 Canal 486-5426
Holmes Mark Snyder atty 755 Magazine 581-5141
Res 3000 St Charles Av 897-6694
Holmes Michael R atty 405 Amelia Gretna 361-1736
Holmes Rug Cleaning 900 Destrehan Row 734-3418
Holmes Seafood Market—
92 Holmes Blvd Gretna 362-9378
92 Holmes Blvd Gretna 362-4646
Holmes Steven P 4722 Earhart Blvd 827-0033
Holmes Willard P ofc 4722 Earhart Blvd 827-0033
Res 1314 Lakeshore Dr Metairie 833-1452
Holmes William Rev 1708 Buccola Av Marrero 341-1910
Holmes Wrecker Service 244-1414
Holmquist Nelson MD ofc 1901 Perdido St 568-6065
Res 4720 Owens Blvd 283-2492
Holoway Michael E atty 643 Magazine 586-1200
Holstein Home Furnishing Inc
5648 Jefferson Hwy Jefferson 733-8076
HOLSUM BAKERIES INC 4700 Howard Av 486-5563
Holsum Computer Services 4730 Dixon 488-2628
Holt Cemetery 527 City Park Av 482-0662
Holt J E Turner ins
401 Veterans Memorial Blvd Metairie 834-8940
Res 6209 Gillen Metairie 887-1484
Children's Telephone
6209 Gillen Metairie 888-5406

HOLT PLUMBING & HEATING 827 Nunez 366-3501

HOLT RALPH S TESTING LAB INC
416 Girod 523-7844
Holt Sally Dr 7263 Cuipepper Dr 244-6975
Holten Thomas G Dr dntst
Maison Blanche Bldg 523-4186
Holten Thomas G Dr
291 Walker Rd River Ridge 737-0586
Holton Anne Baudino atty 755 Magazine 581-5141
Holton William A Jr ofc One Shell Square 561-5600
Holtzman Alan Mck Dr Ochsner Clinic 838-4000
Res 612 Colony Rd Metairie 733-1043
Holtzman David MD 2415 Tulane Av 588-5821
Holwadel Russel atty Texaco Center 566-1311
Holy Cross Fathers—
Provincial House 1828 S Carrollton Av 861-3643
Sacred Heart Church 139 S Lopez 827-1481
Holy Cross Lutheran Church
6154 Press Dr 288-3437
Holy Cross School—
Main Ofc 4950 Dauphine 942-3100
Admissions Ofc 942-3157
Bengal Band Hall 942-3126
High School Band Rm 942-3124
Middle School Ofc 942-3130
Principals Ofc 942-3100
Development & Alumni Ofc 942-3156
Athletic Dept 942-3129
Cafeteria 942-3162
Brothers Residence 942-3142
Athletic Dept 942-3122
Business Ofc 942-3115
Holy Cross Sisters 562 Focis Metairie 838-9503
Holy Faith Temple Church Of God In
Christ 2138 4th 897-9940
Holy Family Church-Rectory
170 Lakewood Dr Luling La— Kenner Tel No- -469-7769
Holy Ghost Church—
Rectory 2015 Louisiana Av 891-3172
School 2035 Toledano 899-6782
Convent 3325 Dauphine 897-2191
Cafeteria 2035 Toledano 899-6915
Parish Center—
3319 Dauphine 895-8129
Holy Ghost Parish Federal Credit
Union 2017 La Av 895-0242
Holy Guardian Angels Church—
AngelSquare 1701 Bridge City Av Bridge City— 436-9376
908 Wiegand Dr Bridge City 436-4712
Holy Hill Baptist Church
1409 Manhattan Blvd Harvey 362-4481
Holy Name Of Jesus Church
6226 St Charles Av 895-8388
Holy Name Of Jesus School—
6325 Cromwell Pl 861-1466
Faculty Res 6628 Freret 899-8953
Holy Name Of Mary Church 500 Eliza 362-5511
Holy Name Of Mary School 502 Olivier 361-4884
Holy Orthodox Catholic Church
American Synod 1426 Magazine 525-9446
Holy Redeemer School—
Ofc 1941 Dauphine 943-1830
Cafeteria 1941 Dauphine 945-4659
Holy St Matthews Baptist Church
1300 Eagle 866-2369
Holy Spirit Church 6201 Stratford Pl 394-5492
Holy Temple Church Of God In
Christ 1818 Conti 525-8583
Pastor's Res 1818 Conti 524-5811
Holy Trinity Catholic Church
721 St Ferdinand 949-4413
Holy Trinity Christian Baptist
Church ofc 1727 Erie 368-4242
HOLZER SHEET METAL WORKS INC
321 Burgundy 525-8134
HOMACO INTERNATIONAL INC
Simmons Houma La
NEW ORLEANS TEL NO- -524-5428
Home Appliance Service 2209 Magazine 523-3978
Home Away From Home Day Care
Center 1743 Marigny 947-6823

HOME BEVERAGE SERVICE INC
See Our Ad At Beverages-Home Delivery In The New Orleans Yellow Pages
712 Frenchmen 947-5554

HOME BUILDERS ASSOC OF GREATER
NEW ORLEANS 2424 N Arnoult Rd Metairie 837-2700
Home Care Program Of Tulane
University Hospital 1415 Tulane Av 587-2190

HOME DEPOT THE—
62 Westbank Expwy 362-2361
1000 S CLEARVIEW PKWY
JEFFERSON 734-1601

Home Economics Agts—
Jefferson Parish 1825 Bonne Ann Dr Marrero— 341-7271
St Bernard Parish Courthouse
Chalmette La 279-9402
HOME EFFICIENCY PRODUCTS 340-2952
Home Emergency Living Program
7100 St Charles Av 866-9691
Home Finance 4899 Westbank Expwy Marrero 340-6966
HOME FINDERS INTERNATIONAL
832 St Louis 525-7153
Home Finders Of Louisiana Inc
823 St Louis 522-0155
HOME FURNISHING STORE THE
1600 Prytania 566-1707
Home Guard Home Improvements
Inc 3456 Cleary Av Metairie 887-8081

HOME HEALTH SERVICES OF LA INC—
Phone Answered 24 Hours
Westbank Ofc 361-3969
2001 Canal 581-6768

Home Improvements Specialist Co
1324 David Dr Metairie 455-4456
Home Indemnity Co ins
3510 N Causeway Blvd Metairie 837-9280

HOME INSPECTION SERVICES
Canal Place One 525-2336

Home Insurance Co The
3510 N Causeway Blvd Metairie 837-9280
Home Inventory Service
505 Bellemeade Blvd Gretna 392-6664
Home Land Realty Co
3720 Bunker Hill Dr Metairie 455-4600
HOME LIFE INSURANCE CO OF NEW
YORK—
415 LAFAYETTE 581-9903
Group Dept 1515 Poydras 566-6011
Home Loan & Thrift Corp
703 N Belle Chasse Hwy Belle Chasse 394-1270
Home Made Makings & Other
Things 4436 Transcontinental Dr Metairie 454-8313
Home Mission Baptist Church
4201 Erato 822-7330
Home Nursing Service 941 Mouton 282-8111
Home Owner Magazine 805 Marengo 899-8801
Home Plate Inn 4833 Tulane Av 488-9113
HOME PROTECTION OF NEW
ORLEANS INC—
Main Office 3456 Cleary Av Metairie 455-7218
Shop 120 Magazine Chalmette 277-9322
Home Protection Patrol Inc 737-5862
Home Protection System Inc 393-9607
Home Protectors Inc 2612 4th Harvey 368-0064
Home Realty Co 3420 Delaware Av Kenner 464-1590

HOME RECOVERY SERVICES
4500 11th Marrero 347-5511

Home Renovations 853 Mystic Av Gretna 393-7295

HOME SAVINGS & LOAN ASSN
3625 Canal 486-7791

Home Security & Iron Works
1301 S Salcedo 822-0813
Home Services contrs 734 Jefferson Av 897-2081
Home Sweet Home Motel
4231 Airline Hwy Metairie 835-5946
Home Town Super Market—
6850 Westbank Expwy Marrero 347-2026
Home Transportation Co Inc
Hwy 190 E Slidell La— New Orleans Tel No- -525-2038
Home Video Entertainment
3600 Williams Blvd Kenner 443-1127
Home Video Movies Co 3351 Kabel Dr 391-0014
Home Water Distillers Inc 486-8423
Homebright Decorating &
Remodeling 334 Hord Jefferson 733-9359
Homecraft Land Development Inc
1919 Veterans Memorial Blvd Kenner 466-5723
Homedale Beaute Shoppe
619 Homedale Av 488-2198
Homedale Inn 618 Homedale Av 488-9130
Homemaker's Furniture Co
613 Clearview Pkwy Metairie 888-5575
Homemakers Upjohn
See Upjohn HealthCare Services
Homer's Lounge 2600 St Peter 822-9605
Homes Octavia 8137 Oleander 482-7861
HOMES PRINTING CO 2637 Gravier 822-0955
Homes Recovery Services
4500 11th Marrero 347-5511
Homeseekers Savings & Loan Assn
See South Savings & Loan Assn
Homet Aluminum Co
2735 Virginia Av Kenner 467-4607
Homet Co 2735 Virginia Av Kenner 467-4607
Homet Patio Co Brown Rd
Ponchatoula La ..... New Orleans Tel No- -525-2805
HOMET PATIO CO 2735 Virginia Av Kenner 467-4607
Hometown Electric Service
424 Oak Marrero 341-5890
Homeworks Inc
Uptown Square Shopping Center 866-6375
Homrighausen Edgar Rev 2021 S Dupre 822-0771
Honda Country 2428 Williams Blvd Kenner 466-3656
HONDA EAST motrcycls
7130 St Claude Av Arabi 279-5574

HONDA-GARRETT HONDA motrcycls
10150 I-10 Service Rd 246-8000

HONDA-GARRETT HONDA COUNTRY
2428 Williams Blvd Kenner 466-3654

HONDA WEST
1208 Lafayette Gretna 362-5200

HONDURAS PETROLEUM CO INC
2531 S Broad 822-5230
Honduras SAHSA Airlines—
Freight
New Orleans International Airport Moisant Field
Kenner 464-9061
New Orleans International Airport Moisant Field
Kenner 464-1212
Honey Baked Ham Co—
For Gift Shipping Toll Free Dial '1'
& Then 800 343-4042
HONEY BAKED HAM CO
3120 Severn Av Metairie 885-8368
HONEY BEE NURSERY
817 Houma Blvd Metairie 835-3544
Honey Hut 9605 Jefferson Hwy 733-9367
Honeyhurst Restaurant 1401 S Rampart 523-9457
Honey's Place Restaurant
3106 Loyola Dr Kenner 468-6367
Honey's Pool Parlor
95 Westbank Expwy Gretna 361-9654
Honeywell Bldg Services
3621 Riverside Dr Metairie 454-7231
HONEYWELL INC—
Sales & Service—
Main Office 6620 Riverside Dr Metairie 454-6200
Administration 6620 Riverside Dr Metairie - 454-7210
Building Services Division Sales
6620 Riverside Dr Metairie 454-7220
Building Services Division Parts
6620 Riverside Dr Metairie 454-7230
Commercial Sales
6620 Riverside Dr Metairie 454-7240
Commercial Construction
Division Service
6620 Riverside Dr Metairie 454-7250
Data Processing Operations
6620 Riverside Dr Metairie 454-7260
Data Processing Operations
6620 Riverside Dr Metairie 454-7270
Federal System Operations
6620 Riverside Dr Metairie 454-7280
Field Engineering Division
6620 Riverside Dr Metairie 454-7290
Process Control Division
6620 Riverside Dr Metairie 454-7300
Process Control Division
6620 Riverside Dr Metairie 454-7310
Residential Division
6620 Riverside Dr Metairie 454-7320
Electronic For Medicine—
6620 Riverside Dr Metairie 888-2857
HONEYWELL PROCESS CONTROL
DIV-INDUSTRIAL SERVICE
CENTER 9213 Interline Baton Rouge La
NEW ORLEANS TEL NO- -525-2517
HONEYWELL PROTECTION
SERVICES—
Central Office 421 N Carrollton Av 482-5721
Service 421 N Carrollton Av 482-5721
Sales & Accounting 421 N Carrollton Av 486-7761
Hong Kong Bathhouse & Oriental
Massage 3029 Esplanade Av Metairie 888-6713
Hong Kong Gift Shop 1717 Canal 522-6579
Hong Kong Islands Line America $$
TM Bldg 534-7554
Hong Kong Market
2311 Veterans Memorial Blvd Metairie 833-1452
Hong Kong Mohawk Custom
Tailors 106 Royal 524-3529
Hong Kong Restaurant—
7400 Lakeshore Dr 282-1511
7400 Lakeshore Dr 282-9160
Hong Kong Restaurant
520 E St Bernard Hwy Chalmette 279-8289
HONG KONG TRADE DEVELOPMENT
COUNCIL
World Trade Center Dallas Tx 214 748-8168
Honore Lawless contr 2337 Annette 944-4033
Res 2337 Annette 943-1437
Hontas Mark Dr MD
4431 Veterans Memorial Blvd Metairie 454-3434
Hood Motor Co
501 S First Amite La— New Orleans Tel No- -523-9486
Hoods Auto Repair 2620 Buffon Chalmette 279-5322
Hood's Inc 4520 Williams Blvd 466-2217
Hook & Ladder Lounge 5746 Hayne Blvd 241-9849
Hook Michael S 2332 N Arnoult Rd Metairie 837-4555
Hooker Charles 1001 Howard Av 528-3875
Hooker Jim ofc 4405 Chastant Metairie 455-7779
Hooker Reba Real Estate 1840 Benson 944-5499

HOOLEY INC
4401 Bienville Av 482-3619

Hooper Genevieve Wirth Rev
1228 Moss 482-4343
Hooper-Holmes Inc ofc
3131 N I-10 Service Rd E Metairie 837-5366
Hooper N Gorman CPA ofc
2852 Carey Slidell La— New Orleans Tel No- -861-0017
HOOPER'S STOVE WORKS 1108 Bienville 891-8839
Hooten-Sprinkle Co Inc
648 Hickory Av Harahan 737-8834
HOOTER O J FURNITURE CO INC
1936 Magazine 822-8167
Hoover Bendel C Dr DPM
1799 Stumpf Blvd Gretna 362-3738

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PLAINTIFF'S EXHIBIT
6

ESTYLE

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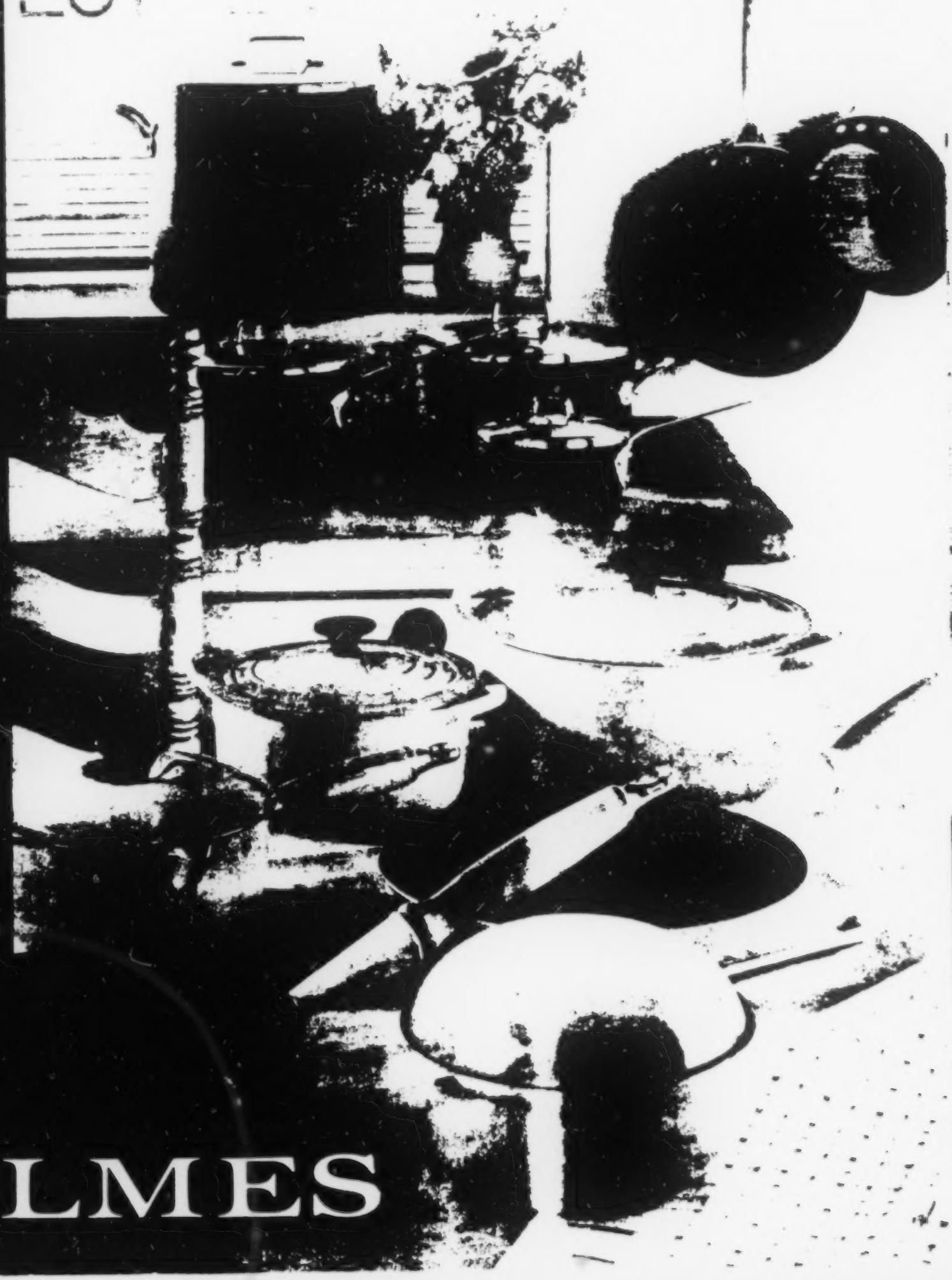
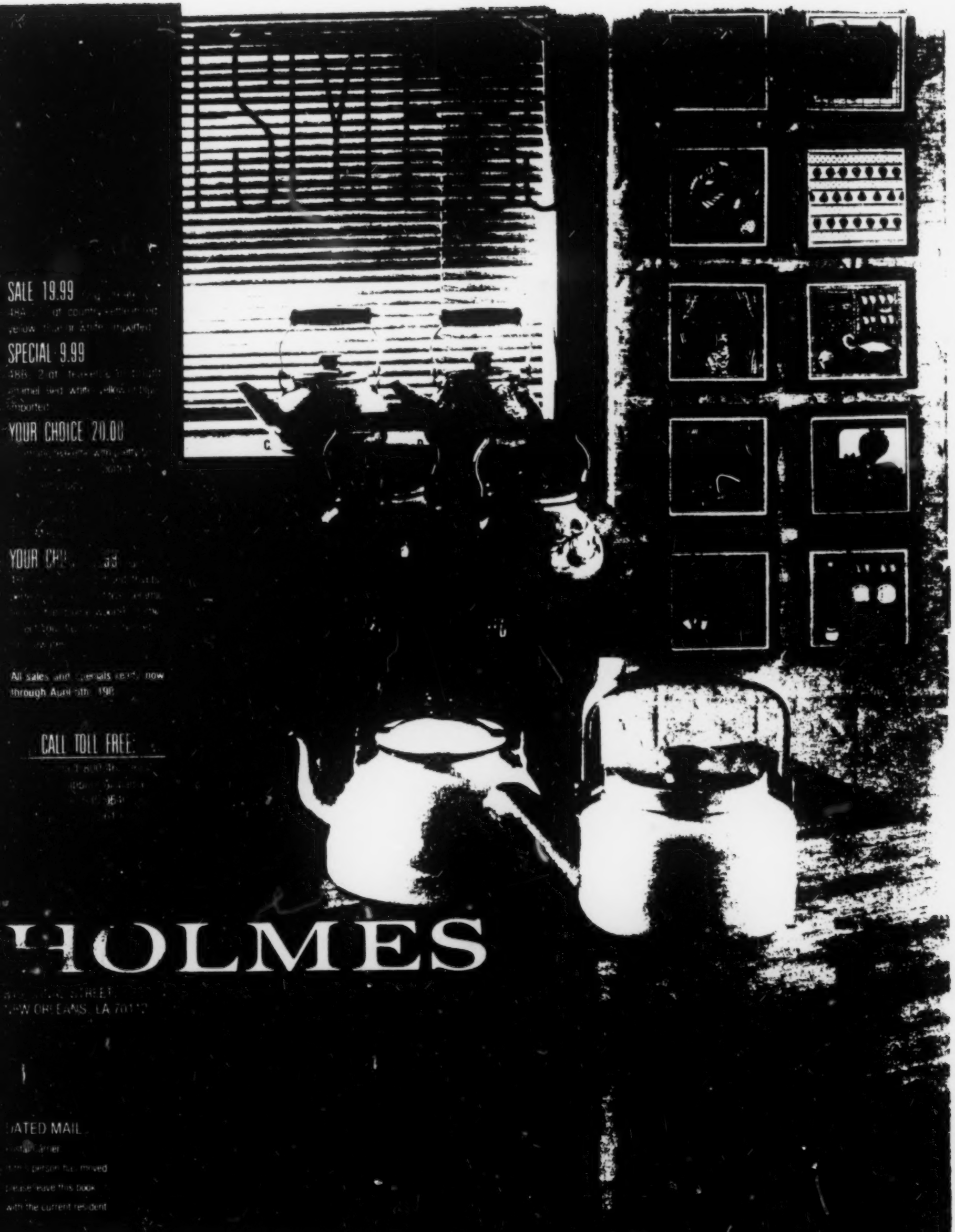


HOLMES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CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

(Title Omitted in Printing)

TRANSCRIPT OF PROCEEDINGS

Testimony and notes of evidence taken in the above-entitled and numbered cause in Open Court before the HONORABLE REVIUS O. ORTIQUE, Judge, presiding on Tuesday, the 19th day of March, 1985.

APPEARANCES:

ANDREW RINKER, JR., ESQUIRE
Representing the Defendant

ROBERT PUGH, ESQUIRE
Representing the Plaintiff

WILLIAM GRACE, ESQUIRE
Representing the Defendant

* * * *

[24] MR. PUGH: Yes, may we call to the stand Mr. Buddy Leach.

* * * *

CLAUDE LEACH, Leesville, Louisiana, 71446; after having first been duly sworn did testify as follows:

* * * *

DIRECT EXAMINATION

EXAMINATION BY MR. PUGH:

Q Are you an attorney and officer of the Court?
A That's correct.

Q Do you serve in any elective capacity?

A At the present time I'm serving as State Representative in the 30th Representative District State of Louisiana Legislature.

Q Do you hold any position with the committee in connection with that?

A I do, I serve as chairman of the House Ways and Means Committee, a position I've held for about eight years.

[25] Q Have you ever been elected to any other offices besides State office?

A I've served a term in United States Congress.

Q All right, sir, as the chairman of the House Ways and Means Committee of the State of Louisiana, is that the Committee where tax legislation initially is considered?

A That is correct, under the constitution of our State review which originates in the House of Representative and Committee Submatter is the Ways and Means Committee.

Q All right, sir, in that connection, I would like to ask whether or not you have any personal knowledge as to services which might be rendered by the State of Louisiana through its taxes to a company called D.H. Holmes or its employees or customers?

MR. RINKER: Your Honor, we object to his [26] question. As we pointed out earlier, this matter is really without dispute. There is no doubt that the State of Louisiana provides numeral services including fire, police protection, sanitation, and all types of services.

THE COURT: Well, I'm not sure about that. I'm not sure that it does. That's for all of these services.

MR. RINKER: You're correct with respect to cities, there are government services that are provided. We don't dispute that.

THE COURT: We ought to have it in the record. Let's see what his witness says.

MR. PUGH: Thank you.

THE COURT: [27] The objection is overruled.

BY MR. PUGH:

Q Would you be kind—

A Yes, I will respond in this manner. The constitution of our State requires all revenues to flow through first the general bond redemption fund and all revenues collected by the State of Louisiana flow through this fund into the State general fund, from the State general fund and from the State's general funds are appropriations made annually. I have knowledge from my work in the State Legislature of the sums of money appropriated annually for various services. We have a uniqueness in Louisiana in that we use State general funds for local governmental purposes. Large amounts of money come into the Parish of Orleans as it does to other parishes also, of course, that would directly benefit the [28] customers and the employees of D.H. Holmes would be the minimum foundation formula funding public education.

This runs close to $100 million a year excluding many other amounts that the State appropriates directly to the Orleans Parish School Board. I'm familiar with the amount that we appropriated to the Orleans Municipal firemen to supplement their pay. This is over 4.8 million a year of municipal policemen in New Orleans which protects the property of D.H. Holmes as well as its customers.

The State of Louisiana supplements that salary, those salaries, I should say, the Sheriff's deputies, both criminal and civil, which serve both the customers as well as the business itself and protection as well as serving the legal papers and in attending to [29] those matters the State supplements the Deputy Sheriffs salaries. The State, of course, appropriates from its general funds to the mass transit systems of close to $5 million dollars a year which benefits the customers and their method of transportation,

as well as the employees of D.H. Holmes coming and going to the various locations.

The road funds this past year, I think the Parish of Orleans received around $2 million which goes for the streets in the City.

MR. RINKER: I'm going to object, we're talking about a tax period '80 and '81, and I would ask you to instruct the witness to direct his comments to expenditures made in New Orleans relative to those particular tax years.

[30] THE COURT: Well, as indicated before, I think we need to hear this testimony since counsel has indicated that it is part of the theory of his case. The Court knows there is a D.H. Holmes in Lafayette and there is a D.H. Holmes in, I think, there is one in Baton Rouge, and I would suspect that these figures are being offered as merely suggestive, not the total end of the point. You will have your opportunity to cross examine. We're going to overrule your objection. The objection is noted for the record and your objections are made continuing. You may proceed.

BY MR. PUGH:

Q If you will, Mr. Leach?

A The same service is rendered the [31] citizens who are both customers and employees of D.H. Holmes and I would think also, perhaps, stockholders of the corporate structure were rendered in '79, '80, as they are today. The amount differs on occasion, but the percentage remains fairly constant, particularly in the field as previously stated.

The minimal foundation for public education, fire protection, police protection, the Sheriff deputy, coroners, the uniqueness in New Orleans, the amount of money that the State pays for the assessors commission, which is not paid in other parishes, this allows the assessors to do their work, which, of course, renders revenues for the City to

operate on providing these other services, such as sewerage, et cetera. The State also provides funds that are [32] collected through taxation throughout the State for drainage in the City of New Orleans.

We provide funds for the Audubon Park Zoo. Most recently over $500,000, and through the years, including back into the 79, 80 percent. Appropriations were made for the Audubon Park Zoo for the enjoyment of citizens for the entire City, customers of D.H. Holmes as well as employees. I believe that we could go into the supplemental services on a parish level, if the record would like to reflect that. The State funds also provide pro rata shares of the District Attorney's office, your District Judges' offices, your various expenses of the judicial system, all supplemented from collections that go into the general fund and appropriate out to the [33] particular parishes.

Q You've spoke primarily of Orleans. You've used some generalities as indicated by the Court, the Court has taken notice of the fact that there is a D.H. Holmes in another city. He believes there is one in Baton Rouge, on the premises that those facts will be developed, what figures, not necessarily the same figures, but some figures be attributable to each of those other cities and parishes that the Court has mentioned and I now mention?

A In each case where there is a site of a D.H. Holmes within Louisiana, the figure would be comparable based on population figures with the exception of mass transit. Orleans receives a greater share of mass transit funds than the other parishes, but as far as your other cities, there would be comparable figures based on [34] population.

MR. PUGH: I tender this witness, your Honor.

CROSS EXAMINATION

BY MR. RINKER:

Q Representative Leach, you testified earlier that you had been a member of the Louisiana House of Representa-

tives or that you were currently, were you a member of the Louisiana House of Representatives in the year of 1979, '80 and '81?

A I was in that in 1979. I was not in '80-'81.

Q During that time, did you have an occasion to come across tax receipts or have first hand knowledge of income and disbursements made for these various areas that you described earlier in your testimony?

A Yes, on several occasions in 1979, particularly, I was serving as chairman of the Governor's Ad [35] Valorem Tax Commission Study as well as serving subcommittee in my own House Ways and Means committee and through studies conducted, I had first hand knowledge at that time of these various items that I have spoken of this morning.

Q By "ad valorem" you mean property tax?

A Correct.

Q Do you have any idea how much, in taxes, Holmes paid in the year 1979, '80 or '81?

A No, I do not think it's, first of all, the answer, no. Secondly, I do not think that would be information that would be public to begin with, sir, I have never tried to nor had reason to find out how much any taxpayer in our State pays.

Q Do you know how much of the expenditures were expended from its Holmes' customers and employees?

A I could not because I do not know [36] the number of customers, but I do know that D.H. Holmes supports throughout their, wherever they're located, by the population, and each person who would trade with D.H. Holmes has benefits through these services which we spoke of earlier.

Q To what extent are the benefits, in dollar amounts?

A You would have to take a per base percent. A homeowner would have benefited from lower insurance rates because of having adequate fire protection and not having to pay for this on ad valorem tax basis. D.H.

Holmes would have benefited directly from having adequate fire protection.

Q Does D.H. Holmes benefit any more than any other citizen or company or department store in the State?

A D.H. Holmes would benefit to the extent of its value, to the [37] extent of the property, the same as you would benefit or I would benefit.

Q Benefit to the value of its property?

A As far as the insurance value and the amount, it would benefit.

Q I'm talking about all the taxes, in general, that you described earlier, all the payments for services?

A There would be some that D.H. Holmes would benefit greater from and some perhaps not as great. But as far as the funds go, from mass transit, from moving customers in and out of the City, as far as the services and the bridges, the amount of money being spent there, in commercial enterprises, the larger the enterprise, the larger the benefit.

Q Does Holmes derive any special benefits beyond that in any other department store or any other company or wholesale or [38] retailer, for that matter?

A When you use the word "any other" I cannot answer that question.

Q I'll give you an example. The Gus Mayer's or Godchaux's or any other store, does D.H. Holmes derive any benefit which is not common to all of these other companies?

A The benefits are common if the company is in the same volume of business that D.H. Holmes is.

Q And you have testified earlier that the value of property is important and that's what the tax should be based on, is that correct?

A I did not testify to that. I testified a moment ago to the fact that you asked me about a specific savings and benefit and I mentioned that on your fire insurance, your insurance premiums are determined by your inven-

tory amount. And to that amount D.H. Holmes would [39] benefit by having lower insurance rates.

THE COURT: Just one minute. Let the witness complete his statement.

THE WITNESS: I did not testify or did not think I testified, do not recall testifying to the value of property for taxation purposes. I'll be glad to answer the question you had in that field.

THE COURT: Any other department stores with a similar situation, volume, property, or whatever, would be taxed in the same manner, you don't discriminate that?

THE WITNESS: That's correct.

THE COURT: All right.

BY MR. RINKER:

[40] Q With respect to these taxes and in particularly with respect to catalogs, what is the basis for the State imposing a tax on catalogs, particularly catalogs mailed from out of State directly to residents?

A In revised statute, I think, I believe you will find this, this would refer to our section, "use tax." The catalogs are property of D.H. Holmes. I assume in this case, since this case, since this is the case of D.H. Holmes, Holmes owns the catalogs. They pay to have them prepared and they use them to generate business from the mail order branch of their business, I assume. The taxes only use value of the catalogs. When you are unable to determine exactly the exact value, then you have to look to see what it costs to put that catalog together. This is on all catalogs used that I'm [41] familiar with that are prepared either in state or out of state to generate business within Louisiana.

Q At what point is that use tax imposed on the catalogs, at the point in which they're located out of state or at the point at which they come to rest in Louisiana?

A I cannot answer the question. I feel quite sure there are other witnesses from the Revenue Department

that could give you that detail on procedure of taxing. I do know it's a use value of taxes and I do know it would be on the value of the catalogs, the amount, quantity to D.H. Holmes to prepare these catalogs.

* * * *

[42] GEORGE SILBERNAGEL, 4110 Janet Avenue, Baton Rouge, Louisiana; after having first been duly sworn did testify as follows:

* * * *

DIRECT EXAMINATION

BY MR. PUGH:

Q Would you give your address, please?

A My name is George Silbernagel. I live at 4110 Janet Avenue, No. 2, in Baton Rouge.

Q Are you employed, sir?

A Yes, I am a legislative fiscal officer analyst with the Legislative Fiscal Office in Baton Rouge, Louisiana.

Q And is that for the State of Louisiana?

A That's for the State of Louisiana.

Q And how long have you been so employed?

[43] A Since September of 1982. I've been an analyst with the fiscal office.

Q What is your educational background?

A I have a B.A. and M.A. from the University of New Orleans and in addition to that, I had 15 or 20 hours of extra accounting degree work at LSU.

Q All right, sir, what are your duties with the Legislature?

A With the Legislature Fiscal Office, we have our primary responsibility providing fiscal and economic information based on the various appropriate bills every year, various legislature instruments that are introduced along with other specific requests made by legislators.

Q Did you have an occasion to prepare any type of survey or report relative to the services, finances, that

the State of Louisiana afforded to Orleans and Orleans Parish?

[44] A In September of 1982 there was a request from the Speaker of the House to furnish information regarding the distribution of funds to various local governmental units and it was requested by the fence speaker to separate funds, distribute to the City of New Orleans, from those funds distributed to the legislator of the State.

Q And did you prepare such a report?

A We prepared a report with regards to those funds.

Q Was that report either prepared by you or under your supervision?

A The request went to the legislature fiscal officer, Mark Grennan (spelled phonetically) who then requested that I and another analyst accumulate the data and put it into a form that would be released to the speaker of the house and member of the legislature. So, yes, I did prepare that report.

Q And did you accumulate analysis [45] from any other individual in connection with it?

A We spoke with several other analysts that work in the fiscal office in order to collect the data. I, myself, was involved in specific areas. Other analysts were involved in other areas of that report.

Q But, it was, the whole coordination of that was your responsibility?

A Yes, sir.

Q Can you recollection, from your own memory, items that were involved in that report?

A The report is many pages, several pages long. I can't recall the number, I can think very clearly about specific types of aid, specific program names in which funds were distributed to the local government. One of the areas was the Parish Transportation funds, which is a total sum of about $42 million that is distributed to [46] parish governing authorities. Also, the constitutionally mandated amount of $90 million is distributed

on a state-wide basis known as revenue sharing, and I believe in 1982-83, I can't recall those amounts, I believe that New Orleans received about $12 million in revenue sharing money and about 2.5 and 2.7 million in parish transportation fund money.

Those are just some of the areas that we collected data for.

Q Do you have that report with you or a copy of that report?

A I do not have that report with me.

Q May I approach the witness?

THE COURT: Of course.

BY MR. PUGH:

Q Do you have another copy in your file?

A I do.

Q May we have a 30 second recess where he can get another copy and I can give the copy to [47] opposing counsel?

MR. RINKER: I would like to object to this whole line of testimony. One, there is no dispute that services are provided through money provided by the State. And second, the evidence is irrelevant because there is no foundation to establish that this deals with figures of expenditures during 1979, 1980, 1981. Third, this evidence is cumulative and most of it's been testified to in general concept of the witness.

MR. PUGH: My response is, first of all, given the opportunity, I will inquire of the witness as to whether or not the figure is comparable from '79, '78 and '80. And in addition [48] to that, as the court is aware, I do want to make a showing for the record of the services that are performed from tax funds for this area.

THE COURT: All right. The only part of his objection that I'm a little concerned about and that is the objection based on the information being cumulative. We don't need to have every witness to go through in detail every point. I'm going to allow you to continue the testi-

mony because I realize that you do wish to make a record and I do think that it is relevant in a general way, and maybe an Appellate Court would want to have more specifics and rather than have it come back to us and then send it back [49] up to them, we will put in as much as we deem appropriate, but cautioning you not to be unaware of the rules against cumulation of material.

MR. PUGH: It may well be that the best way to get to it would be to introduce, let them identify the report and introduce it in the record based on the testimony that's already given that was done by him under his supervision and at least that will save the record some time.

THE COURT: The objection is overruled, except, the court does recognize at least one portion of your opposition that may be valid, and we'll rule again at that time. The objection is [50] noted for the record.

MR. RINKER: Thank you, your Honor.

BY MR. PUGH:

Q I have handed counsel a copy of what the gentleman has testified to. May I ask you one or two questions?

A Yes.

Q First, from experience in that office, can you tell me whether or not that the figures reflected there are approximate, exact, close comparable to similar figures for the years of '78, '79, '80 and '81?

A Sir, there would be a difference between the figures that you have in this report and the years '79, '80 and '81, to the extent of the new program being instituted. I can draw your attention on Table 2, the second page, if one wanted to back out at that number, that would not have been included [51] in '79 or '80, to the best of my knowledge. One of the only places you would be able to back out of a number would be mass transit, which was not in existence in 1979-80.

Q Was it in existence in '81?

A It was in existence in '80-81.

Q Thank you. Do you see any other indications—

A No, the only other—basically the only difference would be that the amount would be slightly lower in '79-80 then increasing again in '80-81 and then increasing in '81-'82, basically to reflect the demand for services by the local governmental units in making these demands on the State for additional State aid.

Q On behalf of the plaintiff, your Honor, I would like to approach the witness and take the document, mark it and offer, introduce it into evidence.

THE COURT: [52] All right, fine. Any objections other than the one that was stated previously?

MR. RINKER: No, your Honor, other than the fact that a lot of these figures may be based on hearsay and we're waiting to see if the witness will testify to his personal knowledge as to all of these pieces of information.

THE COURT: Very well. The witness has declared that the report was either prepared by him or by his supervisor and we think that that will take care of the hearsay rule, but obviously, when you have him on cross examination, you will have the opportunity to question him. The Court is ruling, however, that [53] the document is admissible into evidence and the Court will give it such weight as it deserves. Proceed.

MR. PUGH: On behalf of this witness and subject to the ruling of the Court, I would like to file, offer this into evidence, this documentation as P-1.

THE COURT: All right, it is admitted. Hold on to it until such time as you're ready to make your list and submit it.

MR. PUGH: Thank you, your Honor. I tender the witness.

CROSS EXAMINATION

* * * *

[55] EXAMINATION BY MR. RINKER:

Q Are you aware whether Homes makes any contributions in the form of various taxes, including sales, use, income, franchise, excise taxes payable to the State of Louisiana which funds internal use for the payment of some of these appropriations or expenditures in this State?

A D.H. Holmes would be liable for payment of any taxes in the form of sales tax and the like.

Q But, does D.H. Holmes in fact—

A They would pay the same taxes as any other business in the City would pay, both city taxes and [56] State taxes.

Q But, does D.H. Holmes pay such taxes?

A Yes.

Q Do you know how much D.H. Holmes pays in taxes?

A No, I do not.

* * * *

[78] ROY C. BRADLEY, 356 Summit Ridge, Baton Rouge, Louisiana 70815; after having first been duly sworn, did testify as follows:

* * * *

DIRECT EXAMINATION

* * * *

EXAMINATION BY MR. PUGH:

Q If we may, for the moment, turn to the catalog issue and I'll ask you first whether or not there is a tax placed upon a Louisiana based business printing catalogs in Louisiana?

[79] A Yes, sir.

Q Do you know whether or not the catalogs at issue here were printed in Louisiana?

A They were not.

Q Do you know where they were printed?

A I believe they were printed in New York State. I'm not absolutely sure, but that is my understanding.

Q Do you have personal knowledge what occurs to the catalogs once they are printed?

A Yes, sir, it's my understanding they were mailed to customers at D.H. Holmes Company within and without the State of Louisiana.

Q Sir, you said it's your understanding, you don't have any personal knowledge of that, is that correct?

A No, sir.

Q Is it these catalogs, is it your understanding that they have been mailed in Louisiana, is that the catalogs that are [80] referred to in the 15 day letter that proposed assessment?

A Yes, sir, with the exception of the ones that were mailed to out of state customers.

Q Hold on just a minute.

MR. GRACE: I just have an objection. I didn't see anywhere there is a reference in the proposed assessment to any catalogs.

EXAMINATION BY MR. PUGH:

Q You're absolutely correct, and I'll ask you whether or not the reference is in the response from Holmes to the proposed assessment?

A Yes.

[81] CROSS EXAMINATION

BY MR. GRACE:

Q Mr. Bradley, you did not participate in the assessment, is that correct?

A That's correct.

Q You did not look at any figure of Holmes, did you?

A That's correct, I did not.

Q You don't know what Holmes' total candy sales were for the month—for the year 1979, '80 or '81, do you?

A No, sir.

Q And you don't know the value of the [82] catalogs that Holmes had printed out of state and mailed from out of state in Louisiana, what the values of those catalogs were for the years?

A I do know from reading Mr. Falter's letter, in his letter I do have that in my possession, the total amount under the assessment for the audit period, but I did not develop any of these figures and did not participate personally in the audit.

* * * *

[109] Q Turning to the catalog issue, will you describe the incident of taxation of these catalogs?

A The instance of taxation would be under Provision RS 47302, a dealer who imports or causes to be imported tangible personal property into the State for use and distribution in the State.

Q What rights or powers over these catalogs does Holmes have when they enter the State of Louisiana?

[110] A They have the right of power to direct their distribution.

Q No, I'm talking about, is it your contention that when this enters the State, Holmes has the power to tell the mailing authorities, after they have been mailed, to deliver them to certain people?

A You said after?

Q After they have been deposited in the mail in New York by the printer in New York, is it your contention that Holmes exercises any incidents of ownership over those catalogs?

A Yes, sir.

Q What incidents of ownership does Holmes exercise over those catalogs after they have been deposited in the United States mail in the State of New Orleans?

A Well, they have caused those catalogs to be imported into the State for their use, for the furtherance of their [111] business and thereafter delivered to their customers.

Q What use is made of these catalogs by Holmes in Louisiana?

A They promote the sales of their articles.

Q Has the State done any study to determine whether or not Louisiana residents receive these catalogs, use these catalogs?

A Not that I'm aware of.

Q How has the State made any studies or made any determinations as to what use is made by Holmes of these catalogs?

A Yes, in viewing this examination, I feel like Holmes has ownership of the catalogs and cause them to be delivered in this State.

Q What facts do you have to support that, that is merely a contention, is it not?

A I view it as a matter of fact that they purchase catalogs and cause them to be imported in [112] the State. I don't see any dispute there.

Q Do you agree that these catalogs were printed out of State?

A Yes.

Q Do you agree that the catalogs were deposited by those printers into the United States mail out of State?

A Yes, sir.

Q Do you agree that after they are placed in the mail, Holmes has no control over those catalogs?

A That's correct, directing of the mail after that point, they don't.

Q Okay.

A But, if they're not delivered, they probably are returned to them. It would be the party whose return address is shown that would be responsible for them.

Q Do you know what sales were made as a consequence of these catalogs coming into the State of Louisiana?

A Not directly. I know that obviously [113] sales were made. The number of them, I do not know. I know that mail order business, for many businesses, are a significant part of the economy.

Q Do you know what percentage of Holmes' sales were made to Louisiana residents who may have received these catalogs?

A I do not.

Q Has your department made a study to make that determination?

A No, we have made studies as far as catalogs sales but not by individual companies.

Q So, I understand it then, that you have not performed any study to establish a link between the distribution of the catalogs and the amount of sales made by Holmes to these people?

A That's correct.

Q Do you know, can you recite to me one instance of a customer of Holmes who has received such a catalog and made a sale and [114] purchased something from Holmes? Can you give me the name of one customer?

A I believe that I have.

Q How many catalogs have you received?

A I don't know.

Q How many purchases have you made as a consequence of receiving that catalog?

A I don't recall.

Q Do you agree that Louisiana revised statute 473055 provides in part that the use tax intended to apply, and I quote, "tangible personal property after it has come to rest in the State and has become a part of the property in the State"—

MR. PUGH: I have no real objection except the statute speaks for itself. Whatever it says, it says. We ran into a problem earlier on the opinion aspect of it.

THE COURT: Yes, I think that is correct [115] and I think also that it is time to break. I don't see where we can gain anything by going on. This witness is going to be here.

MR. GRACE: Thank you, Judge.

(Court is in recess.)

THE COURT: Mr. Bradley, for the record, I remind you that you're still under oath. We will now continue your examination by the defendant.

MR. GRACE: Thank you, your Honor.

Q Mr. Bradley, I think before the break we were discussing revised Statute 47305, paragraph five, which appears on page 35, it's paragraph number five of page 35 of this booklet. Particularly the language in the statute which says that it's the intention [116] to levy a tax on property, about the last two lines on that paragraph. The question I have for you, Mr. Bradley, do you agree that the catalogs, which are the subject of this controversy, come to rest in Louisiana when they are received by the residents of Louisiana?

A Yes, when they are placed in a mailbox, I assume.

Q And is this the point in time which the State considers the tax to be imposed when they are delivered to the Louisiana residents' homes?

A Yes, at the time they are delivered.

Q Do you agree that at no time while those catalogs are in the United States mail that those catalogs are in the possession of D.H. Holmes?

A That's right.

THE COURT: You mean the physical possession?

[117] MR. GRACE: Yes, sir.

THE WITNESS: Right.

THE COURT: All right.

BY MR. GRACE:

Q You agree that when they are in the United States mail, Holmes has no right to retrieve those items out of the mail?

A I don't know that for sure.

Q Does the State contend that at some point in time while those catalogs are in the United States mail that the catalogs are under the control of D.H. Holmes?

A Yes.

Q Okay. At what point are points while those catalogs are in interstate commerce, do you content they are under the control of D.H. Holmes?

MR. PUGH: May it please the Court, I would object to the use of [118] the phrase "interstate commerce." That is a legal conclusion. If he wants to refer to the mail—

MR. GRACE: I will withdraw the question and rephrase it, your Honor.

Q At what point in time, while those catalogs are in the United States mail, does the Department of Revenue consider those catalogs to be under the control of D.H. Holmes?

A They're owned entirely by D.H. Holmes and D.H. Holmes controls their delivery. They come to rest in the State upon delivery to the customer.

Q In what way does D.H. Holmes control the delivery?

A They determine who they would be delivered to.

Q And is it your understanding that these catalogs are preaddressed outside of the State of [119] Louisiana?

A Yes.

Q After the catalogs are preaddressed and dropped in the United States mail, does D.H. Holmes exercise or have the right to exercise any control over those catalogs, do you know?

A I'm not sure during the period of transit, I would think there is a possibility if it is discovered that there

was a substantial error and it might not be easy, but they could contact the Postal Service when they first enter Louisiana and have them stopped, at that point it might be possible to prevent their distribution.

Q Do you know that to be a fact that they have that right?

A No, I do not.

Q When these catalogs come to rest in the State at that time and delivered to a Louisiana resident, what control do Holmes have over those catalogs [120] at that point in time?

A After they come to rest?

Q Yes, after they have been delivered to a resident and put in the mailbox?

A I don't know what control, they would probably have a responsibility, I guess, if the person received it, refused delivery, and would return it to the Post Office and put it back in their box saying, "Return to Sender."

Q Do you know where the return would go to, whether it would be interstate or out of state on those catalogs?

A I think it would go interstate, I'm not absolutely sure.

Q Do you know, or are you just speculating?

A I'm speculating.

Q Okay. Does the State contend that after these catalogs have come to rest and been deposited to residential mailboxes, that D.H. Holmes owns those [121] catalogs?

A Yes, sir.

Q You do?

A Yes.

Q And what is the basis for that contention, what is the factual basis, could you tell the Judge?

A Holmes purchased them and directed their delivery and until such time as the addressees pick it up and accepts it, it would be Holmes' property.

Q Is it your contention that Holmes has the right to go and retrieve them out of some residents' mailboxes if they are the owners?

A No, I believe there are other restrictions having to do with mailboxes, but that's for other purposes.

Q What rights of ownership does Holmes have after these catalogs are delivered into the mailbox of Louisiana residents, do you know what rights of [122] ownership they would have?

A Not specifically.

Q What right of control would Holmes have over these catalogs after they are delivered into the mailbox of the Louisiana residents?

A As far as the catalog itself or the purpose for which it was placed there—

Q I'm sorry, are we taxing the catalogs?

A Right.

Q Okay. Then let me just, and I'm sorry, I thought it was implicit in all my line of questioning. The catalogs, what right of control does Holmes have over those catalogs after they are placed in the mailboxes of the Louisiana residents?

A I'm not sure what the postal requirements would be, as I mentioned before, as far as responsibility—

Q All right. I think you previously [123] indicated that the moment of taxation and which gives rise of taxation is when they come to rest and they're taken out of interstate commerce, is that correct?

A Yes.

MR. PUGH: If you don't mind, that's a legal conclusion.

BY MR. GRACE:

Q All right. When they're taken out of the mail, is that the position the Department has, they're taken out of mail is when they're subject to tax?

A When it's delivered to the customer and placed in its receptacle through the slot, in his door or whatever it is.

Q So, if a catalog was delivered in 1978 then the taxes would be due, according to the position of the Department in 1978, is that correct?

A Yes.

Q Is it true even though Holmes may [124] have paid an invoice in 1979 for catalogs that were delivered in 1978?

A Yes.

Q And I believe, have you ever read the petition that's been filed in this lawsuit?

A Not completely.

Q Do you know if the petition referred to the tax year 1978?

A I believe it does.

Q There is no claim for any taxes due for 1978 whether candy or catalog?

A That's correct.

Q So, the petition is in error to that extent?

A There's no claim for '78.

Q Okay. So if there was any inclusion of the catalogs mailed in 1978, there was an error, which was unintended?

A If that is the case, I would assume it would be, yes.

Q Now, I understand that the amount of the use tax in Louisiana is based upon the value of a [125] particular item when that item comes into Louisiana, is that correct?

A Yes.

Q With regards to catalogs, at what point is that value determined when it is deposited—I'm sorry, strike that. Would you tell us at what point the value of the catalog, that we have been talking about, is determined?

A At the time it enters the State and comes to rest in the State.

Q And that again is when it's delivered to the mailbox?

A Yes.

Q Has the Department done any studies or does it have any sampling to make a determination of what the value of that catalog is after it is deposited in the mailbox of Louisiana residents?

A Our basis is the cost price at the time that it enters the State.

Q The cost price to Holmes?

A Yes.

[126] Q Would you agree that these catalogs don't have any transit value to Louisiana residents?

A They do to Holmes and that's who the owner was at the time of delivery.

Q What is the transit value, what can they do with those catalogs?

A To further their business—

Q Has the Department made any determination as to what that value is to Holmes?

A In the use tax situation, the value is not related to the taxes and incidentally, we have not, we have no need to.

Q Would you agree that the consumer in Louisiana, the residents who receive these catalogs use them after they have been delivered to them?

A Yes.

Q And would you agree that they are the owners of those catalogs when it's delivered to them?

A Once they have accepted.

Q And is it the State's contention [127] that if they're not accepted, until they actually remove them physically from the mailbox—-

A Yes.

Q And is it the State's contention that Holmes is the owner of those catalogs while they're in the mailbox?

A Yes.

Q It's the State's contention that Holmes can exercise various incidents of ownership over those catalogs while they are in the mailbox of Louisiana residents?

A Yes.

Q What direct services does Louisiana provide Holmes when Holmes mails these catalogs or when a printer mails Holmes' catalogs out of State to a Louisiana resident, what services is the State provide directly to Holmes?

A Since Holmes' primary business is located in the State, it receives all the benefits [128] enumerated before. It provides the service for the postal truck to drive to deliver them, protection for the post office employees and for the Holmes' employees.

Q Is this service provided directly to Holmes or to the Postal Service?

A Directly to the Postal Service, indirectly to Holmes.

Q Do you know whether or not Holmes pays the Postal Service to transport its product from New York to Louisiana?

A Holmes or it's representative does, yes.

Q Does the U.S. Postal Services pay any type of charge to the State for protection?

A Not that I know of, no.

THE COURT: Now, that's really irrelevant, isn't it.

BY MR. GRACE:

Q Do you agree that Holmes pays and collects sales taxes from sales [129] that may be generated through the distribution of these catalogs?

A Yes.

Q And does Holmes also collect and pay over to the State the sales tax on purchases made at their stores, except candy?

A Yes.

Q And in addition to the sales tax, do you agree that Holmes pays income franchise and other taxes in the State?

A I'm not personally aware, but I assume.

Q Didn't you know the amount that Holmes paid in these other taxes?

A No.

Q And doesn't Holmes pay use tax on other items that they have, for example, hangers?

A Yes.

Q And other computer equipment that they have or perhaps lease?

A Yes.

Q Does the State of Louisiana impose [130] use tax on catalogs accepted into the State by out-of-state department stores?

A Yes, if the department store has connection with the State.

Q What if the department store has no principal part with the State?

A If it does not meet the engaging business definition of Louisiana, say, tax law, we cannot require them to collect sales or use tax on sales made into the State on behalf of the Department.

Q And is this, is the use tax imposed on all dealers who import catalogs, whether it's a one page leaflet to a 500 page catalog?

A Yes, on the use tax we would. We cannot require them to collect and remit for us, but if we discover that in the audit, as has been done here, it would be assessed the same as Holmes.

Q How about a company that doesn't meet the definition of engaging [131] in business for Louisiana purposes, but nonetheless send catalogs in Louisiana? Do you impose a tax or make an assessment on those catalogs?

THE COURT: He said, "No." Didn't you answer that question? He answered that question.

MR. GRACE: I thought he said that there was a distinction between what company is engaged in business and not engaged in business.

THE COURT: He said that if he doesn't meet the definition that there is no way for them to collect a tax and none is imposed on them.

* * * *

[141] PAUL R. FALTER, 21 Siapi Street, New Orleans, Louisiana; after having first been duly sworn did testify as follows:

* * * *

CROSS EXAMINATION UNDER THE ACT

BY MR. PUGH:

Q By whom are you employed and in what capacity?

A D.H. Holmes, Company and I'm employed as the vice president/treasurer controller.

Q And how long have you been so employed?

A Since February 1965.

Q And had you worked for Holmes in any other capacity prior to this one?

A No, I have not.

Q Have you worked in any similar institutions prior to that?

[142] A Yes, I did.

Q And with whom were you employed prior to that?

A F & R Lazarus, Incorporated in Columbus, Ohio.

Q Is the nature of their business comparable to Holmes?

A Yes.

Q How long were you so employed by them?

A Approximately 18 years.

Q And in what capacity?

A As assistant controller. My ending job was assistant controller and I held various duties as I was rising up in the ranks through the assistant controllership.

Q You moved here to become the treasurer/controller?

A I moved here to become the controller, treasurer title was held later.

* * * *

[145] Q All right. As I appreciate it, from the record, the petition and the answer that the company was organized somewhere in 1905, is that right?

A It's approximately right, in 1842 the company was originally founded.

Q Is that when they started doing business on Canal Street?

A No, I can't answer those dates specifically, but I'm not that much of a historian on those years, but it was several years after the store opened in 1842 that they moved to Canal Street.

Q Do they own the property at Canal Street?

A Yes, we do.

Q Do you own any other locations?

A We own many locations.

Q All right, sir, will you identify for the Court the location that you own in the State of Louisiana?

A Well, let's see, we own the Canal [146] Street store. We own the Oakwood store. We own the Lake Forest store, I'm not positive on all of these.

THE COURT: Lake Forest, you own the land?

THE WITNESS: We own the store.

THE COURT: You own the store, but—

THE WITNESS: The land.

THE COURT: You're leasing out there, I'm sure?

THE WITNESS: As I said, I'm not that exactly positive on all of these.

THE COURT: But, what do you want, Mr. Pugh, those that they actually own? Ohio might be a common law state and they have all kinds of interest in land, but we're talking about ownership. I think Mr. [147] Pugh is talking about the ground upon which the stores rests.

THE WITNESS: We own them all. We own all of the land.

THE COURT: All right. We'll just take that.

BY MR. PUGH:

Q And there are some 15 such locations?

A In Louisiana we have 14, 13 locations.

Q You have locations in New Orleans?

A Orleans, yes.

Q You have locations in Jefferson?

A Yes, we do.

Q You have a location in Baton Rouge?

A Three locations in Baton Rouge.

Q You do?

A Yes.

Q And you have them in another city mentioned by the judge this morning?

THE COURT: [148] Lafayette, also Hammond and Houma.

BY MR. PUGH:

Q All right, sir. How many employees do you have?

A Approximately 5,000.

Q And how many customers do you have?

A Charge account customers, in the neighborhood of 500,000. These are approximate figures. I don't know the exact amount.

Q Yes. Has any study been made to ascertain the differential between charging customers and plain old customers?

A Pardon?

Q Do you have any idea how many customers you have beyond the charge customers?

A Probably double that amount, maybe triple the amount.

Q So, a million to a million-five?

A Right.

* * * *

[150] BY MR. PUGH:

Q Your counsel suggested this morning when he had a witness on the stand, that you paid no taxes in New York, is that a fact?

A That's a fact.

Q Is that because these catalogs are exempt?

MR. GRACE: I would object to the question. I think it is irrelevant to a determination here and I don't know if Mr. Falter has personal knowledge of what he's quali-

fied to do and I don't think there's been any foundation laid.

THE COURT: He can say, of course, whether he knows or not and as I [151] recall you were the one who opened that door.

MR. GRACE: I'm just saying—I don't care whether he said he did or didn't. I think the basis is a legal conclusion. It's like whether something is interstate commerce—

THE COURT: No, he asked him if he paid taxes in New York. That's what he asked him and he said no.

MR. GRACE: And he asked him the reason why, an exemption or something else.

THE COURT: Well, he didn't finish the question when you objected. We didn't even pay any attention to that part because he had not asked him it yet. Go ahead, Mr. Pugh, ask this [152] next question.

EXAMINATION BY MR. PUGH:

Q Why do you print your catalogs in New York?

A Why do we print the catalogs in New York?

Q Yes, sir.

A We print the catalogs in New York because we belong to a big organization that we all get together and we have the economy, a scale, we can have them printed in New York much less than we can for in Louisiana.

Q Do you know whether or not this group can give Louisiana that benefit?

Q Do you know whether or not this group can give Louisiana that benefit?

A I don't know.

Q What is the name of that group?

A Frederick Atkins.

Q Do they print all of your catalogs?

A Maybe I didn't answer you right. The group that we belong to is what I was trying to determine, they blend together to get the catalogs, that is a group of

[153] department stores all over the United States. That is the Fredrick Atkins Buying Organization.

Q And Holmes belongs to that?

A Holmes belongs to that.

Q And as a member of that organization, no attempt has been made to ascertain whether or not a Louisiana publishing house can do the same thing?

MR. GRACE: That is not what the testimony was.

THE COURT: Well, even if he did have knowledge, Mr. Pugh, maybe I'm the only one lost, but I am not able to follow the realm of this line of questioning. So, you better at least let me know.

MR. PUGH: The initial line of questioning was to ascertain whether they paid, and I got an [154] answer to that and the purpose for that was to show that it's fairly apportioned that Louisiana is not taking a tax away from another state.

THE COURT: Oh, I see.

MR. PUGH: That was the whole purpose of that.

THE COURT: I am sympathetic for us getting business for Louisiana, I didn't think that—

MR. PUGH: Yes.

THE COURT: All right.

EXAMINATION BY MR. PUGH:

Q On these catalogs that are printed, are they printed for the purpose of securing business?

A Printed for a purpose of attempting to secure business, yes, they are.

[155] Q Do they in fact secure business?

A To some degree, yes.

Q To such a degree to justify the cost of printing?

A I'd have to say yes.

Q Sir, do most of those catalogs provide a mail-in slip so that you can order things out of the catalog?

A Yes, they do.

Q Is your catalog order department very large?

A Compared to what?

Q Well, can you give me a comparison between your catalog sales and your over-the-counter sales, please, sir?

MR. RINKER: Your Honor, I object.

THE WITNESS: I don't have these figures available but they are very small.

MR. RINKER: We're talking about the period of '79, '81, so any circumstance could have [156] changed in the last four years. We would like counsel to phrase his question in terms of the period which is at dispute in this trial.

THE COURT: Okay, now, one thing, so we have the rules right. We don't want Mr. Pugh to go back to Monroe, Shreveport and say, "Look, those lawyers double-teamed me." It's all right for you all to shift around, but only one per witness. You see, you had better sit closer to him so that you tell him when he starts with his witness.

EXAMINATION BY MR. PUGH:

Q Please confine or assume that whenever I ask you a question it's in reference to the taxable period at issue with this court. When there are exceptions I will point them [157] out.

THE COURT: Very good, that will take care of it.

EXAMINATION BY MR. PUGH:

Q Can you give me a dollar percentage comparison for the catalog sales and over-the-counter-sales for the period?

A It would be speculation on my part. It would be a very low percentage, I would say, one to two percent, if that much.

Q In your experience in the business, is one to two percent of your volume, does that justify printing these catalogs?

A The business generated from the catalogs doesn't necessarily justify the printing of the catalog. You must keep your name in front of the public.

Q So, it serves more than one purpose?

A Yes.

Q In other words, the catalog is used for more than catalog [158] sales, it's to encourage people to use D.H. Holmes?

A Yes.

Q Isn't it a fact that D.H. Holmes' address on Canal Street is the return address on these catalogs?

A I can't answer that positively, but I believe it is.

Q Yes. Now, do you know who determines the name to whom catalogs are to be sent?

A Our sales promotion manager.

Q That is his responsibility?

A Yes, it is.

Q It's not a responsibility of this group that you all go to to have the printing costs lowered?

A No, it's not, because they have their own customers that they mail their own catalogs to.

Q So, you predetermine who you want to target for those catalogs?

A Yes.

Q And to the extent of this litigation, those are targeted to [159] specific people in Louisiana?

A Louisiana, Mississippi, Alabama, Pensacola, Florida.

Q For purposes of this litigation, they're targeted, however, for people in Louisiana and admittedly there are other people out of the State who—

A Yes.

Q Do you know whether there is any language on the address as to what is to occur if that person has moved or doesn't live there?

A I could not know.

Q You don't know if anything is put on there?

A I really don't.

Q Do you get any of those catalogs back?

A Yes.

Q Holmes prepays for the printing after the printing has occurred?

A We pay a portion in advance and pay the balance after it's printed and mailed.

[160] Q So, if there was a bill for 1976 rendered in 1977 to your company by the printer, then that bill would have been a partial bill for the printing and that part of it would have already been paid, is that your testimony?

A '76 and '77?

Q Yes.

A Would you mind repeating that again?

Q As I understand from you, what you're telling me is that you all pay in advance the portion of the printing and you pay the balance after the printing?

A Yes

Q Because we have a bill that we have discussed here that was paid in a taxable year but was supposed to have referred to a non-taxable year, you do not know what I'm talking about, I assume?

A Not in '76 and '77, no.

Q All right, sir, who determines how the shipment will be made, the [161] method by which the catalogs leave the printer, and arrive at a designation?

A The sales promotion manager makes that arrangement, makes that decision.

Q And do you know what that arrangement is?

A Yes.

Q And what is that arrangement?

A It's delivered to the post office and it's mailed into the various addresses on the catalogs.

Q Who delivers it to the post office?

A The printer.

Q Who pays the postage?

A We pay the postage through the printer. We send the printer the postage and the printer pays the postage.

Q As a matter of fact, you have a bulk rate arrangement on that printing, do you not?

A Yes, sir.

Q Is that bulk rate paid at the time of deposit of items with the [162] postal service, or do you know?

A I believe they are.

Q So, you permit them to use your bulk rate, is that correct?

A Yes.

THE COURT: Permit who, Mr. Pugh?

MR. PUGH: I'm sorry, the printer.

THE WITNESS: Yes.

EXAMINATION BY MR. PUGH:

Q And you, of course—

A I really would like to retract that. I really am not positive whether they're using our rate for postage or their postage. The sales promotional manager could answer that.

Q Do you expect him to testify?

A Yes.

Q The catalog does have an imprint reflecting Holmes' bulk rate on it, does it not?

A As I said, I'm not positive on that. It does reflect a bulk rate and probably does, but I [163] can't testify 100 percent.

Q I'm not suggesting to you, sir, that this was a catalog that was involved in a specific tax year, that is a brand new one?

A Brand new.

Q In fact, that is your current catalog?

A Yes.

Q Does that catalog not show the bulk rate to Holmes?

A Yes, it says, "bulk rate," U.S. postage paid Holmes.

Q And does it not state that if the recipient is not there or moved or words to that effect, give it to somebody else?

A It says, "Postal carrier, if no one, if the recipient has moved, please leave this with the current resident."

Q Even though you have targeted specific people, those specific people may not in fact receive this catalog?

A That's correct.

Q All right, sir. Have you had an [164] occasion to examine the amount of money that the State of Louisiana is contending is due from the sale of candy and also due on these catalogs?

A Yes, I am.

Q And was that information reflected in what has previously been identified at 2-B, I'll approach the witness, if I may, is this what you have reference to?

A Yes, it is.

Q So, subject to any testimony that may, on behalf of your lawyers, change these figures at least at the moment in this litigation, these figures are correct, is that right?

A That's correct, as far as the assessments was concerned, all I did was verify those amounts to the assessment and broken them down to three catalogs. Catalog issue, candy issue and all the others. Now, the purpose of doing that was so [165] that we could assess and calculate the amount of interest that was due on each one of those categories so that we could pay. As far as the accuracy of those catalogs and the candy being accurate, as far as including out-of-state sales, I didn't verify that. All I was doing was verifying the accuracy of the three categories and the calculations of the interest by the three categories.

Q You are the treasurer of D.H. Holmes, are you not?

A Yes.

Q Is it what you're telling me that you're not prepared to tell me now what your company owes, if it owes these taxes to the State of Louisiana?

A I am prepared to do that.

Q Are you telling me you're not prepared to testify as to how much your company owes the State of Louisiana?

[166] A Yes.

Q You are prepared to testify to that? Can you testify to that?

A I don't have the exact figure. I have them on the table, I believe some percentages. In other words, what I'm saying is, there should be some adjustment based on some things we discovered after I wrote that letter to verify the accuracy of their figure, not my figures.

Q I understand, sir, may I impose upon your counsel to give me, to give to you those figures so we can see where we're in agreement?

MR. GRACE: Would you come on down?

THE COURT: Feel free to do so. Go down and look at what you need and bring it back with you up to the witness chair.

(Off the record discussion.)

EXAMINATION BY MR. PUGH:

[167] Q All right, sir, in your responsibility of May 18, 1983 on behalf of D.H. Holmes, you used a catalog figure of $1,597,438.91. Can you tell me how, if at all, that should be adjusted monetarily?

THE COURT: $1,597,438.91?

MR. PUGH: Yes, your Honor.

THE COURT: Fine, thank you.

THE WITNESS: We have two invoices representing catalogs that were mailed in 1978.

EXAMINATION BY MR. PUGH:

Q All right, sir—

A One of them, it was $111,746.88.

Q All right, sir.

A And the other one was $21,124.30.

Q And that was mailed when?

A According to this here, but to the best of my knowledge, it was mailed in the end of December 1978. December 27th, [168] I believe, that's to the best of my knowledge.

Q Well, then, would you agree with me that the bulk rate mailing looks like some of those would not have been received until the following year?

A No.

Q You believe they were all received in the year of—

A They were delivered to the post office in 1978, in December 27th, I believe.

Q Yes, sir, and the bulk rate was used?

MR. GRACE: Your Honor, if I may just interrupt, I think if the witness prefaced this by saying it was hearsay information, we're going to have the manager of that department who will provide you with the correct information. He's got personal knowledge and [169] he's coming over and he will be one of our witnesses. So, rather than getting confused with hearsay, I think it would be best if the court heard the testimony from someone who's got personal knowledge and he will be here. You can ask Mr. Falter if he's got personal knowledge and—

MR. PUGH: If I'm given the assurance that the other gentleman will be here. Are you in a position with the candy, which appear to be $1,600—no, according to my figures that figure includes candy sales that were made in the State of Alabama and Mississippi.

Q Had you brought that to the attention of the department?

A I did not.

Q And how much are we talking about [170] in sales to Alabama and Mississippi?

A In 1979, 9.5 percent of our sales were in Alabama and Mississippi. In terms of New Orleans, you have to calculate it. In 1980 we had 8.8 percent. In 1981 we had 6.5 percent of our sales which were made in that state.

Q What scientific method did you use to compute that method?

A From our official accounting records within the company.

Q All right, sir. So then the only adjustment that you can testify to are what you just said and we'll wait on the gentleman for the other one.

A As far as the adjustment for the proposed assessment, we still don't necessarily agree that they are due.

Q I understand you're not saying the taxes are due, but what I want you to say, if you can, sir, is that subject to those [171] adjustments the balance there is due.

A I can say that.

Q If the Court so determines?

A I can say that.

• • • •

STEWART GAHN, 922 Ursuline Street, New Orleans, Louisiana; after having first been duly sworn did testify as follows:

• • • •

DIRECT EXAMINATION

BY MR. RINKER:

Q Would you state your name and address for the record?

[172] A Stewart Gahn, 922 Ursuline.

THE COURT: How do you spell that?

THE WITNESS: G-A-H-N.

EXAMINATION BY MR. RINKER:

Q Can you tell me whether you're currently employed and if so, where and in what capacity?

A I am currently employed at D.H. Holmes as Sales Promotional Director.

Q Were you employed in the year 1979, '80 and '81?

A Yes, I was.

Q And in what capacity?

A At the Canal Street store as the Sales Promotional Director.

Q Okay. What are your duties at Holmes as the Sales Promotional Direction?

A The planning of all advertising, radio, newspaper, television, catalogs.

Q Okay. Are you responsible for preparing all catalog advertising?

[173] A Yes, I am.

Q Where does Holmes ordinarily have its catalogs designed, printed and generally put together?

A They're all designed in New York. They're printed at either Atlanta, Boston, Oklahoma City and mailed from those points.

Q Okay. Are any of those catalogs printed in Louisiana?

A None.

Q Can you give us a description of what your catalogs look like, the number of pages, the general size or dimension?

A Well, they run from five and a half by eight inches, as much as maybe 16 pages to 64 pages, eight and a half by eleven inches.

Q During the year 1979 through '81, approximately how many catalogs did Holmes publish or has been publishing per year?

A Let's see, '79 was four, '80 was six and '81 was nine.

Q During this same base period of [174] '79-80 and '81, what percentage of the catalogs, which was published or designed through Holmes' direction, was sent to residents outside of the State of Louisiana?

A Eighteen percent of the total.

Q Where would the balance be sent?

A The balance, one thousand would be distributed to the Canal Street store for use within the store and the remainder would go into Louisiana via U.S. Post Office truck.

Q What percentage would be sent through the mail to Louisiana residents of these catalogs?

A That would be 82 percent, a little less when you take the one thousand out.

Q Okay. You alluded earlier in your testimony, but how are these catalogs, which are distributed to Louisiana residents, distributed, how do they get to the printer to the residents?

A Well, at the printing plant they're [175] labeled and placed on postal trucks which are sent to the various regional post offices.

Q And after the catalogs are distributed to the post office, what happens, does Holmes ever take possession, control of these catalogs at any time within Louisiana?

A We have no need to take possession or control of them. They're delivered right to the residential addresses.

Q To whom are these catalogs addressed?

A They're addressed to customers who are within the area of Louisiana, Mississippi and Alabama, residential addresses.

Q What is the cost for having these catalogs transported from the place where they're printed to Louisiana residents, how is it paid or—

A The cost is in the postage that we have to pay per book.

Q Okay. And who is responsible [176] for applying that postage or applying for any kind of exemption that might be applicable to the postage for these catalogs?

A Well, for applying the postage—

Q Who actually applies the postage?

A It is done by the printer. A check is sent to the post office in Oklahoma City, Boston or Atlanta.

Q Does Holmes ever take control over these catalogs that are preaddressed to Louisiana after they come into the State of Louisiana?

A No, we do not.

Q Does Holmes take them out of mailboxes?

A No, definitely not.

Q Does Holmes have the right to take them out of mailboxes?

A I don't think, I feel that is against the law.

Q Okay. When someone makes a purchase from these catalogs, Louisiana residents make a [177] purchase from the catalogs, is sales tax then collected by Holmes?

A Yes, a tax is collected on any item that is purchased from the catalog.

Q Does that same rule apply whether or not it's ordered by mail through the catalog or whether someone comes into the store after seeing the catalog?

A If it's ordered by mail or if they make a purchase in the store, tax is collected.

Q Does Holmes also collect tax from people, out of State sales tax, from people out of state?

A Yes, we collected for Alabama and Mississippi.

Q After these catalogs are distributed, and that is after they have been put in the mail, what is the value of, in transit value of the mass of paper to Holmes?

A Well, the mass of paper has no value to us once it's printed [178] and mailed. The only value it would be is a sale in which we do collect taxes.

Q Have you ever attempted to sell these catalogs?

A No, we have never sold catalogs.

Q Do you think that you could sell the catalogs?

A Well, it's not our policy to do it. I know that some stores do charge for a catalog.

Q Do you think that for a catalog of your size, and I think you described them in general, some of them are 16 pages, do you think you could sell those for a reasonable price or at least to cover the cost?

A I think you could if it was the policy of the company to do so.

Q Would somebody pay that, would somebody really pay—

MR. PUGH: If it pleases the Court, how would he know whether somebody would pay for a catalog?

[179] THE COURT: Well, I was thinking that maybe it would be in the best interest for us to continue to hear this because it's obvious to me that people are willing to pay for catalogs and they do pay for catalogs. And if he said anything different, I would wonder why he wasn't aware of the fact that there are a number of catalog companies that do sell their catalogs. They sell them in Louisiana. The objection is overruled.

BY MR. RINKER:

Q To your knowledge, are any of Holmes' catalogs ever sold or were they ever sold?

A No, the answer is no, they've got a policy against that. No.

Q Okay. Thank you. I'd like to show you some invoices and ask you to look at these and [180] identify them verbally. Just describe in general for the Court.

A This is a Harrison Service invoice dated December 21, 1978. It's for a winter white sale that we had published. This one is dated December 20, 1978, for a cosmetic, 12-page cosmetic book which was inserted within this white sale catalog.

Q What do these invoices purport to charge for?

A Well, these are the charges for the creative work, for the printing, for the paper, for the mailing, mailing charge.

Q Of what type item?

A Of the catalog.

Q Of the catalog?

A Of the catalogs.

MR. RINKER: Your Honor, I would like to offer, introduce and file into evidence as Holmes-3 A and B, the two invoices, A being the Harrison [181] Service invoice and B being the Belaire Associates invoice.

MR. PUGH: Without objection.

THE COURT: There being no objections, they will be admitted into evidence.

BY MR. RINKER:

Q I would like you to take a look at these invoices and tell me what the Harrison Services invoices are for?

A It's for catalogs.

Q Can you tell from that or from your independent recollection when this catalog was distributed?

A Well, it's our winter white sale catalog and that would have been distributed prior to December 26. The sale started December 26. It would have been prior to December 26.

Q The catalog—

A —placed in the mail. It would have been placed in the mail [182] prior to, I would say around the 20th of December. They would have been placed in the mail then.

Q Okay, and when would they have been scheduled to be received by Louisiana residents?

A Before the 26th or by the 26th. That was the break date of the sale.

Q The 26th of what year and month?

A Of December 1978.

Q I'd like you to also look at what we have previously labeled Holmes 3-B and ask what is that catalog, can you identify that?

A Yes, it's a 12-page cosmetic sale catalog, again a sale that is started December 26, 1978, and it was inserted within the white sale catalog. It was not mailed separately.

Q Would that have been received by customers at the same time as the previous catalog?

A Yes, it would have been.

Q And again, that would have been [183] received in what month, what year?

A December 1978 for the beginning of the sale on December 26. Those are annual sales. We have cosmetic sales and the white sale that occur in December.

MR. RINKER: I have no further questions at this point.

CROSS EXAMINATION

BY MR. PUGH:

Q Were you aware of the total costs attributable to these catalogs for the period in controversy?

A Yes, I am.

Q And what is that figure?

A I would have to see if I have that, for 1979 it would have been $520,000. For 1980, $670,000 and 1981, $834,000.

Q Do you have a total of that, sir?

A No, I don't have that total to those.

Q Give me those figures again, will you please, sir, the dollar amount?

[184] A $520,000, $670,000, $833,000 [sic].

Q How long have you been involved in this catalog mailing arrangement?

A About 20 years.

Q How long for Holmes, or have you been employed by someone other than Holmes?

A I've been employed by Sears years ago.

Q Is that part of the 20 years?

A No, 20 years for Holmes.

Q While working for Sears, were you doing similar work?

A Not in catalog work.

Q I see. You are in charge of the catalog advertisement?

A Yes.

Q Until you testified, it was the impression that all of these came from New York, am I in error, the four, six and nine for the respective years. Some of them came from a location in New York?

A Well, the creative work is all done in New York, and all of the [185] printing is done either in Atlanta, Boston or Oklahoma City.

Q All right, sir, and do you pay any taxes to Atlanta, Boston or Oklahoma City?

A No, there is no tax.

Q All right. So you do not pay a sales tax relative to the printing of these in the state in which they were printed?

A No, they do not levy a tax on there.

Q All right, sir. Now, you did furnish a list of people to whom the catalogs were to be sent, did you not?

A Yes, they were furnished by the store.

Q All right, sir. And where do you derive that list from?

A It is pulled from the current active charge account.

Q The individual who actively is buying from you, is that correct?

A Yes.

Q In your trade, would they be the [186] more likely people to send these catalogs to?

A Yes, definitely.

Q And Holmes pays for those catalogs?

A We pay for the catalogs.

Q Do you pay in advance or in the rears or is there a split charge?

A It's usually a split charge.

Q And Holmes' pays for the postage?

A We pay the postage.

Q As I understand, you send them out on bulk rate, is that correct?

A We do send them out at bulk rate.

Q Now, do you pay for a bulk rate based upon so much a bulk at the time of mailing, or is it a flat rate?

A It's a flat yearly fee.

Q Well. then is it fair to say that you pay the fee from D.H. Holmes for that yearly amount?

A From the store, yes.

Q In other words, then the fellow who does—

A The check is made payable to the [187] post office who is resporsible for sending it out.

Q So, it's not paid by the printer who prints them, it's paid by the store based upon the amount of printing that was done and sent out?

A The weight.

Q The weight?

A The weight of the bulk.

Q Would you agree with me that at the time that they are printed, Holmes owns them?

A At the time we never really owned them. We don't take possession of them.

Q Well, who owns them now?

A Well, they are paid for.

Q Does the printer own them?

A He has possession of them.

Q All right, sir. I don't understand the question of possession, who owns them?

A Holmes paid for the printing.

Q Sir, there is a contract between Holmes and the printer, is there not?

[188] A No, it is not between Holmes and the printer. The contract is between Holmes and the agent who does the creative work. They have a contract with the printer.

Q And in years, do Holmes benefit in that Holmes is the one that ends up or obtains the printed produce, if you will?

A We don't obtain the product. It's delivered right to a home.

Q I'm going to show you a current catalog, if I may. Is it your testimony to this Court that Holmes never owned that catalog?

A Well, it's never come into our possession except for the one thousand that come into our store, but the rest have been sent by the printer, given from the printer to the post office. This particular one was done in Boston.

Q Would you agree with me that that was an intangible—tangible [189] item, you can see it, you can fee it?

MR. GRACE: I object to the question, I think it's a legal conclusion.

THE COURT: Yes, whether it's a tangible or intangible, it's a legal conclusion.

EXAMINATION BY MR. PUGH:

Q That is a series of paper affixed together by some sort of sealing system, is it not?

A Yes, it is.

Q It has pictures on there, does it not?

A Throughout the book.

Q It was done for Holmes, was it not?

A Yes.

Q And paid for by Holmes?

A Holmes paid for it.

Q And you're telling me that Holmes pays for things it doesn't own, is that what you're saying?

A Well, other than the thousand books that come into the store, none [190] of them, you know, the rest are delivered right from the printer to the post office.

Q So, I understand what happens to them, I'm interested in Holmes' belief as to the ownership of them.

MR. GRACE: Your Honor, again, that calls for a legal conclusion and I think that to some extent Mr. Pugh is arguing with the witness. The question has been asked and answered two times.

MR. PUGH: I think we've spent about a half hour this morning talking about this very same thing with the Revenue Department as to who owned them, your Honor.

THE COURT: Well, you know, I think this witness is just flirting around an answer. I think [191] deep down inside he knows that Holmes purchased something for some money and that Holmes doesn't just give away its money.

THE WITNESS: Oh, no.

THE COURT: They purchased these, I assume they did pay. They bought them?

THE WITNESS: Yes.

THE COURT: They bought them from a printer or from a company a certain product?

THE WITNESS: Yes.

THE COURT: Yes. And when you buy something you own it, so, you know, I didn't think that that is causing us too much of a problem. As a matter of fact, I would suspect that counsel would [192] stipulate that at some point Holmes owned these catalogs, but let's move on because no need to—

BY MR. PUGH:

Q All right, sir. Now, would I have a way of knowing that I was on that list in advance of the time I receive that catalog?

A No, you wouldn't.

Q When is the first time I would know it, when I took it and physically saw it?

A When you take it from your mailbox.

Q All right, sir, the list, the distribution list for the residents, I believe you have already testified, was submitted by you all?

A Yes.

Q You called the distribution list to have me receive a copy, did you not?

A Well, we would, if you're an active charge account customer, your name would have been on that list.

* * * *

[194] EXAMINATION BY MR. PUGH:

Q I noticed that that catalog indicates that it is to go to some other residents if your targeted person doesn't live there?

A Right, if they have moved.

Q So, you don't even know whether or not the person is still there to receive it at the time you ship it, do you?

A No, not at the time we ship it.

MR. PUGH: Thank you. That's all the questions I have, your Honor.

REDIRECT EXAMINATION

BY MR. RINKER:

Q Mr. Gahn, in response to Mr. Pugh's questions, you gave him a [195] number of figures or values of catalogs during 1979, '80 and '81. Do those values, that you gave out, represent the total value of catalogs purchased?

A Yes.

Q They don't include catalogs that were sent out of state?

A No.

Q They don't—don't exclude other special situations, destroyed catalogs or catalogs delivered to the Holmes store or things like that?

A No.

Q On the bulk rate stamp that you mentioned was applied to the catalogs before they're mailed, who owns that stamp?

A Well, we pay a fee, a yearly fee for that stamp.

Q Is it Holmes' stamp?

A No, it's not Holmes' stamp. We pay it to the post office in Oklahoma, Boston or Atlanta. We do have one here in New Orleans, but that is Permit No. [196] 1 and that is Holmes' stamp for any mailing we would do here in the City.

MR. RINKER: Okay, your Honor, that's all the questions I have.

MR. PUGH: Before we release this witness, may I suggest to counsel that if we would stipulate that the two invoices that you have, that this witness identified, would be deducted from the amount, can we then agree on the amount that is due for catalogs if the Court finds—

(Off the record discussion.)

MR. PUGH: Your Honor, may we stipulate, we would like to stipulate for the record.

(Off the record discussion.)

MR. PUGH: May it please the Court, on behalf of Shirley [197] McNamara, plaintiff, and D.H. Holmes Company, Inc., defendant, counsel of record have ascertained that the amount in dispute for the years in question as it relates to catalogs, would result in a tax of $43,936.99 exclusive of interest, attorney's fees and costs, and that figure is arrived at by taking the figure $1,587,438.91 and we reduce it by the two invoices that were submitted for the Court's consideration and have been filed in evidence, relating to 1978.

THE COURT: All right, that is the stipulation, thank you very much. Gentlemen, I have a couple of questions I want to ask this gentleman. Since he's going to be going out of [198] town and we may not be able to get him back, the fact of the matter is that D.H. Holmes reimburses whatever amount the printer in Boston tells you he was charged by the post office, isn't that what happened?

THE WITNESS: Yes.

THE COURT: And it doesn't really make any difference who owns the mailing permit, the cost is computed by the post office, depending upon the size and weight of that which you are shipping?

THE WITNESS: Definitely.

THE COURT: Now, let us suppose that one of these catalogs, during the disputed period, was shipped from Boston and that is printed in Boston, [199] created in New York and printed in Boston, and it proceeded from the post office in Boston and it gets held up in Atlanta, no postal services—

THE WITNESS: Sometimes it's transferred at a different regional area.

THE COURT: Whatever is convenient for the airline and postal services, but this happens to stop in Atlanta and along comes somebody who is slightly off their rocker and they take two cans of red paint and pour all over your catalogs, those catalogs. Who do you imagine the post office would contact and say, "Look, these 25,000 catalogs have now been soaked with red paint"?

THE WITNESS: I would think they would [200] contact the printer who turned them over to the post office.

THE COURT: What do they have there at the post office showing that they came from the printer?

THE WITNESS: Well, they usually are bagged and I would think that the printers' bags would show their name.

THE COURT: You don't think they would contact D.H. Holmes?

THE WITNESS: It would be hard for me to say yes or no. It has never happened. In my 20 years, I have never had anything like that happen. I don't know if they would contact us or maybe just throw them away, because they're bulk rate. They don't get preferential treatment.

[201] THE COURT: You don't think that, don't you think at some point D.H. Holmes would know that 25,000 are not going to reach their designation?

THE WITNESS: I honestly could not say yes or no to that.

THE COURT: Okay. Let me ask you this. Someone alluded to this but I think that you would be the best person to answer. The printer in New York says that they just shipped 25,000 catalogs and they're headed down to New Orleans and one of your people on your staff, John Doe, made a correction on the price of a fur coat, you know, something substantial, and John says, "No, I didn't. I'm sure that the boss did," meaning you. [202] Someone goes out and has an abundance of caution and says, "Look, did you make that correction, you've got a fur coat advertised a thousand bucks and really it's five thousand." The printer is then contacted and the printer said that they shipped them last night. They've been sent to New Orleans, Baton Rouge, Alexandria, Shreveport, Monroe and all the major cities. They say that they got them. You recognize that you've got a

$4,000 mistake and subject to the regulations, whatever the regulations of the postal services are, would it not be incumbent upon D.H. Holmes or do you not feel D.H. Holmes would feel that it's incumbent on [203] them to put a hold on those catalogs?

THE WITNESS: Well, I can only tell you that we have had some price errors in books, but we have sold the merchandise at the price that it was in the book. There has never been a difference like that, a thousand, five thousand. There has been, you know, like maybe ten or fifteen dollars that one of our buyers failed to give us the correct price and it ran with the error. In that case we sold it at that price.

THE COURT: But, what would your position be with reference—maybe you're not able to tell me what your position is if there was a substantial error, if $4,000 error [204] price of a fur coat.

THE WITNESS: If it was a substantial error, I think you would have to, you would have to try and analyze how many of those you would possibly sell and is it worth then having that book completely redone, you know, if say it costs you $175,000 to have that book redone, plus you would have inventory on all that merchandise in your store that you can't sell until the new book is done, which would be a couple of months.

THE COURT: I see.

THE WITNESS: If it was a rather large figure it might be beter to sell the stock that you have and take your loss on that than to take any loss on [205] two or three hundred items that are in that book.

THE COURT: Tell me this, is it your position then that these catalogs represent D.H. Holmes and therefore, if not legal bounds by error but morally bound by error and it is likely that Holmes would sustain the loss as a result of that?

THE WITNESS: Yes.

* * * *

[286] MR. RINKER: We'd like to make a motion for directed verdict with respect to the catalog issue in light of the [287] cases that we presented in our earlier motion for summary judgement, which addresses essentially all of the issues setting forth the facts that's been presented here at trial. The cases clearly hold that when catalogs are mailed from an out-of-state printer directly to residents within the State of Louisiana, that those catalogs are not subject to State sales or use tax. These decisions are based on seven State Supreme Court cases. As a matter of fact, it addresses the question that your Honor posed to the witnesses with respect to control over the catalogs within the mail.

For instance, if paint was poured on the catalogs or [288] destroyed and Holmes may not have the right to withhold those catalogs or take them out of the mail, the cases specifically hold, and the case I have in mind is the Bennett Brothers out of the Supreme Court, the Court of Appeals in the State of New York held that that control was insufficient to justify the imposition of sales or use tax on catalogs.

In light of the cases that we presented to you in our motion for summary judgement, we would like to motion the Court for directed verdict on that issue alone at this time.

MR. PUGH: If I may speak to that, your Honor, the jurisprudence he's made reference to, I did call the Court's [289] attention earlier during an argument of the seven cases, five were decided before the Supreme Court on the question of interstate commerce whether or not anything in interstate commerce could be taxed. It's our position, your Honor, that Holmes, for its own benefit, elected to pay someone to design, in New York, and by their testimony, print catalogs which were delivered by the United States mail truck into the State of Louisiana where they first came to rest at the respective post office departments.

From there they were sent out, presumably, by foot mail carriers to the depositors indicated on this specific catalog. They would [290] customarily, and I think the Court can take judicial notice of the fact that they were put into their box.

Now, Holmes owns the catalog. They paid for their printing. They paid for the delivery to the customers. Now, when does the customer become the owner? First of all, they didn't sell them to this prospective customer. They didn't charge them for some of the value that the prospective customers would have paid.

First, everybody owns an object, whatever it is, it's owned by somebody. These catalogs were owned by somebody at all times. Now, they were owned by D.H. Holmes at the time they came into Louisiana, they were owned by D.H. [291] Holmes at the time they were put into the boxes. The only way there can be a transfer of ownership would be by gift. They decided they wanted to give those people those catalogs.

Now, to that end, of course, the law is clear on a gift, 1550 of the Code, 1540 of the Code is all clearly set forth that a donation duly accepted is perfected by the mere concept of the parties and the ownership of the object given are transferred to the donee without the necessity of any other delivery.

First of all, there must be an acceptance of it by the donee. They must consent on behalf of the donee to accept it to have a valid gift. The Code also says that the gift, this is [292] 1540, the gift becomes effective only from the day of its acceptance and until I get that catalog out of there and decide whether I want to keep it or throw it away, it belongs to D.H. Holmes. When I decide I want that catalog, then I have taken there gift with appreciation.

The testimony yesterday was that it has a value. They can do other things with it. The testimony yesterday was also that some of these are delivered back to the store. There was testimony also yesterday that they do put a provision on there that if in February, if Mr. Rob-

ert G. Pugh, the named addressee, is not there, then leave it or give it [293] to the current resident. It can come to me and I might not be there. I may have moved, and then they've got to give it to somebody else. It's not acceptable by the person, it has not been accepted by the person who received it either individually myself or this substitute person living there. Until that occurs, I can't see it any other way. Somebody owns it at all times. Everything that there is on this table is owned by somebody. Every piece of property is owned by someone, who owns it, I can't own something I don't even know anything about. There is no way I'm going to know what they are going to make a gift of, a catalog to me, and not until I'm going to [294] accept it. Up until that point, it ain't mine, your Honor, it belongs to D.H. Holmes.

THE COURT: I understand your point clearly. Tell me two things, I don't recall any of those cases having been from Louisiana—

MR. RINKER: That's correct, your Honor, that is all—

THE COURT: Number two, wouldn't you have to admit that those catalogs come to rest in the State of Louisiana under the ownership of D.H. Holmes, at some point, if by some means of methods delivered them straight from the printer into the box of the addressee?

MR. RINKER: At all points, I think inter[295]state commerce, and it's clear by the regulations, that it spells out, I think it's 47305, which says it is not the intent of the section to tax interstate commerce.

THE COURT: I understand that.

MR. RINKER: While it's in the mail, cases, we cite cases that are part of interstate commerce. At all times the catalogs are in the State of Louisiana, they are in interstate commerce until they are finally delivered to the selected resident. At that time, D.H. Holmes has no ownership rights, no possession or no control, as was pointed out by the State's own witness who said that you cannot get merchandise or items put [296] into the mailbox, in someone else's mailbox.

THE COURT: What about the fact that they stop here at the main post office and then they're taken from the main post office and they're delivered to one of the substations?

MR. RINKER: As the cases that we have cited, that is still in interstate commerce. Holmes has no right or control over those catalogs at any time at which they're taxed in state.

THE COURT: The other thing is, does D.H. Holmes have a right to or any of the department stores, have a right to circumvent the laws of the State by having its catalogs printed out of [297] state and shipped from out of state? Would a person, if they decided that they were going to let Edward Printing Company, which is a local printing company, do their catalogs and mail them, would that be subject to tax?

MR. RINKER: Yes, it would, your Honor, there's no question. As a matter of fact, the cases that we cited discussed the distinction between those two possibilities saying that if you print them in the State you pay the taxes and if you buy them from out of state, you don't pay the taxes.

THE COURT: So, you're saying then in effect, in answer to my other question, that Holmes has control over whether taxes are due on [298] certain items and not the legislature of the State of Louisiana?

MR. RINKER: To some extent, that's correct.

THE COURT: All right, the motion is denied. The Court is not satisfied.

MR. RINKER: I would like to point out, with respect to cases that Mr. Pugh has made a point and on a number of times even when we were arguing this motion for summary judgement, that's only five of the seven cases that we cited, five of the seven cases that we cited were decided before 1977-78 U.S. Supreme Court cases that he cited an objection to our motion. Two of those cases, however, were decided after the Supreme Court [299] cases that he cited, both of those were decided and as a matter of fact, cited earlier cases, not only that the cases

that were decided by the Supreme Court of the State of Washington was appealed to the United States Supreme Court, but writs were denied on that.

So, the Supreme Court had the chance to reverse itself and say that its earlier decision had amended that, but did not choose to do so.

THE COURT: They might not get another chance.

MR. RINKER: Thank you, your Honor.

THE COURT: The motion is denied. I don't need to hear any more about it. All right counselor?

* * * *

[378] PAUL FALTER, recalled to the stand.

* * * *

DIRECT EXAMINATION

[388] BY MR. GRACE:

Q What is the gross dollar value that Holmes did in all its stores in 1979-80 and '81 in that period?

A I can give you exact figures if I get that annual report that is on the desk.

THE COURT: Bring the annual report up to the witness. You should have it right there, it's the annual report.

A In response to your question, 1979, the annual sales were $159,745,000. In 1980, $176,548,000. In 1981, $197,320,000.

BY MR. GRACE:

Q To the best of your knowledge, is Louisiana income tax paid on that income?

A Yes, it is.

[389] Q Well, excuse me, with reference to that figure, do you have your income figure?

A Income figure, yes, we do. Before taxes, that is before Federal and State taxes, 1979 would be $6,350,000. 1980, $9,061,000. 1981, $8,206,000.

* * * *

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS
STATE OF LOUISIANA
DIVISION: "H"

(Title Omitted in Printing)

RESTATED JUDGMENT

[Filed Mar. 25, 1986]

THIS CAUSE was heard on March 19 and 20, 1985, the Court having considered the evidence and the arguments presented, the Court found, in pertinent part:

> [T]hat there is no violation of the United States Constitution, more particularly the commerce clause thereof;
>
> [That the "use tax" imposed by the State of Louisiana under L.A. R.S. 47:305 (5), as it affects the distribution of catalogs by D.H. Holmes Company, Ltd. is valid and enforceable.

IT IS ORDERED, ADJUDGED AND DECREED that there is judgment herein in favor of the Petitioner, SHIRLEY McNAMARA, SECRETARY OF REVENUE AND TAXATION, THE DEPARTMENT OF REVENUE AND TAXATION, STATE OF LOUISIANA, and against the Respondent, D. H. HOLMES COMPANY, LTD., awarding to the said Petitioner, the sum of Forty Nine Thousand Seven Hundred and Ten and no 100 ($49,710.00) Dollars, together with statutory "*interest*" provided for in La. R.S. 47:1601 and "*attorney's fees*" provided in La. R.S. 47:1512.

Thereafter, a timely motion for new trial was filed, entertained, considered and rejected on the 13th day of December, 1985, and as a result thereof, this Court restates this judgment as follows:

The Court finds that there is no violation of the United States Constitution, more particularly the commerce clause thereof;

The Court further finds that the "use tax" imposed by the State of Louisiana under La. R.S. 47:305 (5), as it affects the distribution of catalogs by D. H. Holmes Company, Ltd. is valid and enforceable.

IT IS ORDERED, ADJUDGED AND DECREED that there is judgment herein in favor of the Petitioner, SHIRLEY McNAMARA, SECRETARY OF REVENUE AND TAXATION, THE DEPARTMENT OF REVENUE AND TAXATION, STATE OF LOUISIANA, and against the Respondent, D. H. HOLMES COMPANY, LTD., awarding to the said Petitioner the sum of Forty Nine Thousand Seven Hundred and Ten and no/100 ($49,710.00) Dollars, together with statutory *"interest"* provided for in La. R.S. 47:1601 and *"attorney's fees"* provided in La. R.S. 47:1512.

THIS restated judgment has thus been read and signed on the 25th day of March, 1986.

APPROVED AS TO FORM

/s/ Robert G. Pugh
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Judge